TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1912.

No. 621.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

UNION STOCK YARD & TRANSIT COMPANY OF CHICAGO ET AL.

No. 622.

THE CHICAGO JUNCTION RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED APRIL 22, 1913.

(23173 AND 23174.)

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a United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, petitioners,
vs.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, respondents. } No. 15.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Circuit Court for the Northern District of Illinois, Eastern Division, and in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit: Bill of complaint (filed June 13, 1910).

1 In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

THE UNITED STATES OF AMERICA, UPON THE application of the Attorney General, at the request of the Interstate Commerce Commission, complainants,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. } In equity. 30041.

Bill of complaint.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois:

Your petitioner, the United States of America, upon the application of the Attorney General, made at the request of the Interstate Commerce Commission, brings this bill against the Union Stock
2 Yard and Transit Company of Chicago, a corporation; the Chicago Junction Railway Company, a corporation; the Chi-

cago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, copartners doing business under the firm name and style of Louis Pfaelzer & Sons, and thereupon your petitioner complains and says:

I.

That your petitioner alleges that the Interstate Commerce Commission was created, established, and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof and supplementary thereto, under and by virtue of which said acts of Congress said Interstate Commerce Commission is duly authorized and empowered by the provisions thereof, and it is its duty thereunder, to execute and enforce the provisions of said acts in accordance with the terms thereof.

II.

That the defendant Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Company") is a corporation organized under and by virtue of a special act of the Legislature of the State of Illinois, approved February 13, 1865, a copy of which said act is hereto attached, marked "Exhibit A," and made a part hereof; that the said defendant Stock Yard Company has its principal place of business and principal operating office in the city of Chicago and within the Northern District of the State of
3 Illinois; that at the present time its has issued and outstanding 132,000 shares of stock of the par value of $100 each and bonds and notes of the par value of $500,000.

III.

That the said defendant, the Chicago Junction Railway Company (hereinafter called the "Junction Company"), is a corporation organized and existing under the general railroad act of the State of Illinois, with its principal place of business and principal operating office in the city of Chicago, within the Northern District of the State of Illinois; that said Junction Company has issued and outstanding 22,000 shares of stock of the par value of $100 each.

IV.

That the defendant, the Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "Investment Company"), is a corporation organized and existing under the laws of the State of New Jersey as an investment company, with its principal place of business in the city of New York, in the State of New York;

that a copy of the charter of said Investment Company is hereto attached, marked "Exhibit B," and made a part hereof; that at the present time said Investment Company has issued and outstanding 130,000 shares of stock of the par value of $100 each, together with various issues of bonds.

V.

That the defendants, David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, are citizens of the State of Illinois, residing in the
4 city of Chicago, and constitute a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, with their principal place of business and principal operating office in the city of Chicago, and within the Northern District of the State of Illinois.

VI.

That this suit arises under the laws of the United States, as will hereinafter appear, and especially under an act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and under "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903, and as amended by an act of Congress approved June 29, 1906; and that this suit is brought upon the application of the Attorney General at the express request of the Interstate Commerce Commission, in accordance with the provisions of said acts in this paragraph referred to.

VII.

That under and by virtue of a special act of the Legislature of the State of Illinois, approved February 13, 1865, and hereinbefore referred to as "Exhibit A," the defendant Stock Yard Company was organized and created for the purpose of constructing, maintaining, and operating stock yards in the city of Chicago, for the receipt and handling of live stock as well as dead freight moving thereto by railroad, or by rail and water, whether said live stock and dead freight originated at points wholly within the State of Illinois or whether same originated at points outside the State of Illinois,
5 and in addition thereto was obligated and given power and authority to construct, operate, and maintain, and if necessary to condemn property therefor, lines of railway connecting said stock yards with all of the railroads entering the city of Chicago, engaged in the transportation of property from points without the State of Illinois to Chicago, Ill., or from points wholly within the State of Illinois to Chicago; that for definiteness and certainty as to the nature of the organization of the Stock Yard Company and the powers conferred and duties imposed by the act of the Illinois Legislature hereinbefore referred to, special reference is hereby made to "Exhibit A."

That immediately after the passage of the act of the Legislature of Illinois approved February 13, 1865, the Stock Yard Company proceeded to purchase and acquire, and from time to time purchased and acquired, real estate located west of Halstead Street and south of Thirty-ninth Street, in the city of Chicago, and constructed thereon its certain stock yards, from which time it has continuously operated said stock yards, and is now engaged in the operation thereof; that in the locality above referred to said defendant has about 550 acres of land devoted to stock-yard purposes, and it owns and uses in the immediate vicinity for its other corporate purposes about 250 additional acres of land.

After the passage of the act of the Illinois Legislature aforesaid, the Stock Yard Company also built, in the neighborhood of its stock yards, for the accommodation of its patrons, its certain hotel and proceeded to operate same, and has continuously from that
6 time to the present and is now operating such hotel; that the construction and operation of such hotel was expressly authorized by the charter of the Stock Yard Company.

That in carrying out the provisions of its charter, the Stock Yard Company also constructed railroad tracks authorized thereby, for use in connection with its stock yards and as incidental to its effective operation, and for a long period of time operated its trains and cars over said tracks; that it also constructed adjacent to such railroad tracks, and for use in connection therewith, loading docks, chutes, or platforms suitable for the loading and unloading of cattle, sheep, hogs, and live stock, which said loading docks, chutes, or platforms were constructed in places convenient and accessible to the pens used, operated, and constructed by it in connection with its business as a stock yard; that attached hereto and made a part hereof is a blueprint marked "Exhibit C," which shows the location of the tracks referred to as having been constructed, operated, and maintained by said Stock Yard Company; said tracks intersect or connect with substantially all the tracks of every interstate carrier by railroad (hereinafter called "trunk line carriers") entering the city of Chicago, and by means of said tracks, freight (whether consisting of live stock or dead freight) coming to the stock yards or industries located in that immediate vicinity can and does move in an unbroken line of rail carriage from points outside the State of Illinois to the stock yards and industries located at such stock yards and on the lines of railroad owned by said Stock Yard Company; that along the lines of railroad set forth in "Exhibit C" there have been located private indus-
7 tries that receive and ship out freight over the lines of railroad hereinbefore referred to, originating at, or destined to, points beyond the State of Illinois; that freight originating in the stock yards and points adjacent thereto and from the private industries hereinbefore referred to, and in the immediate vicinity thereof, may be, and is, moved in unbroken carriage over said railroad tracks of the Stock Yard Company in large quantities on through bills of lading from its point of origin on the lines of said Stock Yard Com-

pany to its point of destination beyond the State of Illinois in connection with the trunk line carrier or carriers, by railroad (or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment) that reach such final destination: that the method of moving such incoming and outbound freight is hereinafter more specifically set forth.

That live stock which is brought into the stock yards by trunk-line carriers from points either wholly within or from points outside the State of Illinois, as will be hereinafter set forth, is delivered at said loading docks, chutes, or platforms, where it is unloaded by employees of the Stock Yard Company, and for this unloading service the Stock Yard Company is paid by the respective trunk-line carriers carrying the freight a fixed sum per car for all the cars unloaded; that the specific sums paid by the trunk-line carriers to the Stock Yard Company for this unloading service is not published or filed with the Interstate Commerce Commission in any tariff issued by the Stock Yard Company, or in any tariff to which it is a party by proper concurrence, nor is said charge published or
8 filed with the Interstate Commerce Commission by any trunk-line carrier in any tariff issued by it, or in which it has lawfully concurred, as provided in section 6 of the act to regulate commerce.

When live stock is outbound from the stock yards destined to points outside the State of Illinois, the Stock Yard Company loads such stock through and over its loading docks, chutes, or platforms into cars alongside thereof, as will be hereinafter set forth, and for this service of loading such cars the respective trunk-line carriers carrying such freight pay the Stock Yard Company a fixed sum per car for each car loaded; that the specific charge made by the Stock Yard Company for the loading of said stock as aforesaid, and paid by the trunk-line carrier or carriers as aforesaid, is not published or filed with the Interstate Commerce Commission in any tariff of the Stock Yard Company or in which it has lawfully concurred, nor is said charge published or filed with the Interstate Commerce Commission in any tariff issued by any trunk-line carrier or in which it has lawfully concurred.

The stock so unloaded as aforesaid by the Stock Yard Company is mostly stock consigned on through bills of lading from points beyond the State of Illinois to consignees doing business in and around the stock yards and said stock-yard district in the city of Chicago and adjacent thereto, which has been transported by railroad from points of origin outside the State of Illinois to the stock yards or to points on the lines of railroad owned by the Stock Yard Company in connection with said trunk-line carriers. The stock so loaded by the Stock Yard Company, as hereinbefore alleged, is gen-
9 erally consigned from owners or dealers therein doing business in and around the stock-yards district, and whose places of business or industries are located on the railroad tracks of said

Stock Yard Company and said stock moves therefrom on through bills of lading and by railroad over the lines of railway of said Stock Yard Company in connection with the trunk-line interstate carriers by railroad reaching the points of destination, to points beyond the State of Illinois; that the Stock Yard Company also loads and unloads live stock consigned to or shipped by industries located along the right of way of its said railroad tracks, for which the trunk-line carriers handling the shipment pay the Stock Yard Company a fixed sum per car; that the charge made by the Stock Yard Company for such service, and paid thereto by the trunk-line carriers, is not published and filed with the Interstate Commerce Commission in any tariff of the Stock Yard Company filed with said commission, nor is said charge published and filed with the Interstate Commerce Commission in any tariff issued by any trunk-line carrier, or in which it has lawfully concurred.

The Stock Yard Company is not itself a dealer in cattle or live stock, but keeps and maintains a public market, where all kinds of live stock are bought and sold by others. As a part of its stock-yard business it frequently feeds and waters stock in transit over the lines of the trunk-line carriers, and for this service it charges compensation, which is paid by the carrier or carriers handling the freight from and to said stock yards. This charge exacted by the Stock Yard Company for the said service is not published or filed with the Interstate Commerce Commission in any tariff issued by said Stock Yard Company or in which it has concurred, nor is said charge published or filed with the Interstate Commerce Commission by any trunk-line carrier in any tariff lawfully on file with said commission. The Stock Yard Company also frequently constructs, at the request of the carriers owning or controlling equipment, partitions in cattle cars for the purpose of separating various classes of cattle in a car, and for its service in doing such work it is paid by the carrier which engages it to perform the service. The charges so exacted by the Stock Yard Company for this service are not published or filed with the Interstate Commerce Commission in any tariff on file with said commission. The Stock Yard Company, as a part of its business, feeds, beds, and waters live stock shipped to consignees thereof doing business at or near the stock yards, and for this service it makes a charge and receives payment therefor from the commission men engaged in the business of buying and selling cattle at the yards. The charge for this service is not published or filed with the Interstate Commerce Commission in any tariff filed with the commission.

On December 5, 1897, the Stock Yard Company, pursuant to the powers conferred upon it by its charter, duly entered into, executed, and delivered a certain written instrument by which it delivered all its said railroad to a corporation known as the Chicago & Indiana State Line Railway Company (hereinafter designated as the "State Line Company"). A copy of said written instrument is hereto attached, marked "Exhibit D," and made a part hereof. Under

the terms of said written instrument the Stock Yard Company delivered to the State Line Company all its said tracks and lines of railroad shown in Exhibit C, but it did not deliver its
11 loading docks, chutes, or platforms, or other loading and unloading facilities appurtenant to its stock yard, and it retained the control of said facilities, and has always continued and still continues to use the same, as hereinafter set forth.

VIII.

That said State Line Company was a corporation organized under and by virtue of the general railroad act of the State of Illinois, and after the execution of said written instrument of December 15, 1897, as hereinbefore set forth, said State Line Company, in accordance with the powers conferred upon it by the statutes of the State of Illinois, consolidated with another certain railroad company organized and existing under the laws of the State of Illinois, known as the Chicago, Hammond & Western Railroad Company, and in the consolidation agreement it was provided that the name of the said consolidated company should be "The Chicago Junction Railway Company," being the name of the company herein designated as the Junction Company. Said Junction Company at the time of said consolidation owned and operated, in addition to the tracks operated under the written instrument to the State Line Company above referred to, a belt-line railroad running around the city of Chicago from a point called Franklin Park, northwest of the city of Chicago, in and to the city of Hammond, Ind., and thence to Whiting, Ind.

On November 1, 1907, the Junction Company duly sold to the East Chicago Belt Railroad Company, a corporation of the State of Indiana, all that portion of its railroad running from Franklin Park, on the northwest, to Hammond and Whiting, Ind., as
12 aforesaid, and divested itself of each and every part and all of said belt railroad, as aforesaid, and discontinued the operation thereof, retaining only the railroad tracks originally owned and constructed by the Stock Yard Company, and by the latter delivered to said State Line Company; that said Junction Company does not now own or operate any tracks or railroads except those operated by it under the written instrument aforesaid, which tracks are shown on said blue print, marked "Exhibit C," and which are wholly located within the county of Cook, in the State of Illinois; that the tracks and lines of railroad now operated by the Junction Company under the written instrument hereinbefore referred to, including the right of way thereof, are owned solely and wholly by the Stock Yard Company.

The line of railroad now operated by said Junction Company consists of main tracks running east and west from a point on the lake front, in the city of Chicago, near the intersection of Thirty-ninth Street and the tracks of the Illinois Central Railroad Company and

the lake; running thence in a general westerly direction and northwest to another point in Illinois, being in all about 8¼ miles west of said lake front; that said stock yards are located about 2 miles west of said lake front; that said Junction Company operates a large number of parallel main tracks running between the points aforesaid, the total aggregate length of which is about 40 miles; it also operates switch tracks to industries located at or near the stock yards, in the city of Chicago, aggregating in all about 250 miles of single track; that over the main and switch tracks so operated by it it serves in the neighborhood of 650 industries, all of which are situated in the State of Illinois and located at or near what is
13 known as the stock-yards district of Chicago, in the State of Illinois; that all the railroad tracks operated by said Junction Company are owned solely by the Stock Yard Company.

The method of operating all said tracks by the Junction Company is as follows:

(a) Through trains of interstate freight hauled by the motive power of trunk-line carriers frequently use these tracks in order to connect the tracks of western trunk lines with those of eastern trunk lines. While on the tracks of the Junction Company said trains are subject to the control of train dispatchers of the Junction Company. The semaphores constructed on the tracks operated by the Junction Company are operated by employees of the Junction Company while its tracks are being used by the trains of said trunk-line carriers by railroad.

(b) Every day during the year large numbers of cars loaded with dead freight in carload lots are brought into the State of Illinois by trunk-line carriers by railroad from points outside the State of Illinois, destined generally to points inside the district served by the Junction Company and to points on the lines of railroad operated by it, but sometimes such freight is destined to points outside the State of Illinois. These cars are placed by said respective trunk-line railroads on what are known as the receiving tracks of the Junction Company, and each of said cars is, by the trunk-line railroad handling the same, marked with a transfer card showing the name of the consignee and thus indicating the point or destination to which the same is to be transported by the Junction Company, and the Junction Company, without an order from or any arrange-
14 ment made with the consignee or any other person, picks up each car and with its own motive power carries it from such receiving tracks to the industry or consignee designated in the transfer card placed on the car by the trunk-line railroad that delivered the same to the receiving tracks of the Junction Company; that in the event that such car of freight is destined to a point beyond the State of Illinois, the Junction Company picks up such car of freight on its receiving tracks and transports same to the outgoing trunk-line railroad designated in the transfer card placed on the car by the incoming trunk-line railroad, and such freight is thus handled from point of origin outside the State of Illinois to Chicago and over the

lines of railroad of the Junction Company to the line of railroad of the connecting carrier by railroad and to final destination outside the State of Illinois by such latter carrier by railroad in an unbroken line of carriage by railroad without the intervention of or the performance of any service in connection therewith by the shipper or consignee or the owner of the freight so transported; that the shipments moving from points of origin outside the State of Illinois by railroad and destined to points on the lines of railroad operated by the Junction Company and which are delivered to the Junction Company on its receiving tracks by the trunk-line railroad handling the shipment into Chicago, move on through bills of lading from points of origin outside the State of Illinois to points of final destination on the lines of railroad operated by the Junction Company, and which latter company delivers such shipments to the con-
15 signees named in such bills of lading; that the shipments originating at points outside the State of Illinois which move through Chicago destined to points beyond, and which are delivered by the trunk-line railroad handling same into Chicago to the Junction Company for delivery to the trunk-line railroad that is to handle the traffic out of Chicago and to final destination beyond the State of Illinois move on through bills of lading from point of origin to final destination, and the shipper or consignee is not called upon to perform any service in connection therewith at any point and the originating carrier and the Junction Company and the delivering carrier or carriers handle same in an unbroken line of rail carriage from point of origin to final destination. When any particular car is unloaded on the tracks of the Junction Company, if it goes back empty the Junction Company transports the empty to the nearest receiving track of the railroad company to which said car belongs; if it goes back loaded from the tracks of the Junction Company, the said company transports it as hereinafter pointed out. The inbound freight which is moved in the manner hereinbefore indicated to points or industries located on the lines of railroad of the Junction Company and so served by it comprises many different commodities.

(c) When industries located in the stockyards district on the lines of the Junction Company wish cars for loading outbound dead freight, they either use for that purpose empties then in their possession, from which they have unloaded inbound freight, or they notify the trunk-line railroad over which they desire the outbound
16 loaded car to move, and the agent of such trunk-line railroad thereupon requests the Junction Company to place the empty car upon the switch track used by such shipper for loading purposes. After the car is loaded the shipper cards it, indicating the trunk-line railroad to which it is to be delivered and the point to which it is destined, and the Junction Company, with its motive power, hauls the car to the connecting or receiving track of the trunk-line railroad designated by the shipper; that such car is handled on through bill of lading from point of origin to final destination.

(d) The movement of freight hereinbefore last described relates solely to inbound and outbound freight in carloads. There is also located in the stockyards district, on the tracks operated by the Junction Company, a station known as the Union Freight Station. At this station the Junction Company transacts the following business:

Various industries located in or about the stockyards deliver freight in less-than-carload lots, known as L. C. L. freight, to the said Union Freight Station, where the employees of the Junction Company place it in a car belonging to the trunk-line railroad company which will eventually receive the car from the Junction Company. Such L. C. L. freight consists of many different commodities, and large portions of it are destined to points beyond the State of Illinois. The cars when so loaded are moved by the Junction Company's motive power, operated by its employees, from the tracks of the Junction Company at the said Union Freight Station and placed on the receiving tracks of the respective trunk-line railroads that will handle said freight out of Chicago, from which receiving tracks the trunk-line
17 railroads pick up the cars with their own motive power and forward them to their final destination.

The Junction Company frequently, with its own power, hauls L. C. L. freight from industries on its line of railroad to the Union Freight Station, where it distributes said freight in the same manner as if said freight had been delivered to the Union Freight Station by the shipper. The Junction Company sorts and puts such freight into proper cars for the trunk-line carriers, and such freight, when loaded, is transported by the Junction Company with its own power and placed on the receiving tracks of the trunk-line railroad, as hereinbefore last set forth.

The Junction Company, in the name of the trunk-line railroad which is to forward the freight, gives a receipt to the consignor or shipper for all freight delivered to the Junction Company at the Union Station. In order to enable the Junction Company to receipt in the name of the trunk-line railroad receiving the same from the Junction Company, each of the trunk-line railroads terminating in Chicago and connecting with the Junction Company has furnished the Junction Company with stamps to be used by it and its employees, in the name of said receiving trunk-line railroad, for such L. C. L. freight delivered to the Junction Company at said Union Station. The stamps so furnished by the trunk-line railroads for the use of the Junction Company, as aforesaid, are substantially in the form furnished by the Chicago & Northwestern Railway Company, which is as follows:

"Received by Union Freight Station, Chicago, C. & N. W.
18 Ry., not responsible beyond the terminal station on the line. December 17, 1909, subject conditions of local freight tariff.

"J. HEWITT, *Agent*,

"Per ——— ———."

These receipts may be exchanged by the consignor or shipper for a bill of lading at the office of the trunk-line railroad, but sometimes freight for which such receipts have been issued by the employees of the Junction Company, in the name of the trunk-line railroads, moves to its destination without such receipts having been exchanged for bills of lading.

In instances where prepayment of charges is required on shipments of L. C. L. freight delivered to the Junction Company at its Union Station, the said Junction Company collects the charges and receipts for such freight and the payment of the charges in the name of the trunk-line railroad to which the Junction Company delivers the same, and in turn the Junction Company remits all such charges so collected by it to said trunk-line railroad.

That no inbound L. C. L. freight having destination in Chicago or elsewhere is handled by the Junction Company at its Union Station, except as set forth in the paragraph next following.

The Junction Company has an arrangement with the Baltimore & Ohio Railroad Company, a trunk-line railroad, by which the latter brings from points east of Chicago L. C. L. freight destined to points west of and outside the State of Illinois, and by which the latter delivers to the Junction Company L. C. L. shipments of freight originating at points east of Chicago and outside the State of Illinois and destined to points west of and outside the State of
19 Illinois, and the Junction Company unloads such L. C. L. shipments of freight at its Union Station, distributes it into cars of the western trunk-line railroads which are to carry it to its final destination, and delivers said cars to said trunk-line railroads upon the receiving tracks of said railroads, and such L. C. L. freight is thus transported from point of origin outside the State of Illinois through Chicago over the railroad tracks of the Junction Company, the service over the tracks of the Junction Company being performed by said Junction Company, to the tracks of the trunk-line railroad operating west of Chicago, and thence to final destination, without the intervention or performance of any service in connection therewith by the shipper, consignee, or owner of the freight; that the shipments so handled move from point of origin to final destination on through bills of lading.

(e) The trunk-line railroads originating shipments of live stock outside the State of Illinois and destined to points in the stock-yard district, generally haul same with their own motive power from their points of connection with the tracks of the Junction Company, and over the tracks of the said Junction Company to the loading docks, chutes, or platforms of the Stock Yard Company.

(f) That in many instances, however, carload shipments of horses originating outside the State of Illinois and destined to points in the stock-yards district, are delivered to such points by the Junction Company with its own motive power. Such shipments destined to

a consignee in the stock-yards district are usually transported from points of origin to Chicago in the stock trains of the trunk-
20 line railroads. The trunk-line railroad hauls the car with its own motive power until it reaches what is known as the loading docks, chutes, or platforms of the Stock Yard Company, and there the car containing the horses is set aside and picked up by one of the engines of the Junction Company and hauled by it to the unloading chutes specially provided by the Stock Yard Company for the accommodation of horses. The cars so delivered by the trunk-line railroad to the Junction Company at the chutes or platforms of the Stock Yard Company are carded with a transfer card showing the name of the consignee and the point of delivery to such consignee on the tracks of the Junction Company; such shipments move into Chicago on through bills of lading from point of origin to point of final delivery on the tracks of the Junction Company.

(g) Carload shipments of live stock originating at the stock-yards district, destined to points beyond Illinois, are placed at the loading chutes of the Stock Yard Company by the Junction Company, pursuant to orders of the trunk-line railroads which will carry them to their final destination, and such cars are loaded by the Stock Yard Company. If feeding charges accrue on such outbound shipments of live stock, the Stock Yard Company notifies the agent of the trunk-line railroad of the amount of the feeding charges that have so accrued, and the trunk-line railroad collects such charges at point of final destination, and when so collected remits them to the Stock Yard Company; said charges are not published or filed with the Interstate Commerce Commission in any tariff issued by the Stock Yard Company or in which it has lawfully concurred, nor are
21 such charges published and filed with the Interstate Commerce Commission in any tariff issued by any trunk-line railroad or in which it has lawfully concurred.

(h) The trunk-line railroads transporting freight in interstate shipments to and from points in the stock-yards district are not all supplied with scales, and the Stock Yard Company maintains an office called the register's office, which furnishes weights on all outgoing freight from the stock yards; the men operating the register's office and performing said weighing are employees of, and are paid by, the Stock Yard Company, but the expense of maintaining such office is divided pro rata among the various railroads making use of such service and the Stock Yard Company is reimbursed for its expense in maintaining the same. The scales used in weighing such shipments are the same scales that are used by the Stock Yard Company when live stock is weighed for commission men doing business at the yards, and they are necessary for the use of the Stock Yard Company in the transaction of its stock-yard business.

(i) The railroad equipment which the Stock Yard Company had and owned at the time of the lease of December 15, 1897, hereinbefore referred to, was delivered by it to the State Line Company, which in turn delivered the same to the Junction Company, and the latter

still has a part or portion of the equipment so leased, but has also purchased additional equipment. Said Junction Company uses its engines and cars for the transaction of its own corporate business in and about the stock-yards district, and it does not permit
22 its equipment to go beyond its own rails or out of the State of Illinois, except that it sometimes leases portions of its equipment to such persons or other companies that may desire to lease same.

(j) The Junction Company is responsible to the trunk-line railroads for such cars as are detained on its tracks longer than a given time, and the Junction Company in turn collects demurrage from any consignors or consignees of interstate freight who detain the cars longer than the free time allowed by the rules of the Junction Company.

(k) The Junction Company has scales suitable for the weighing of cars, and frequently, at the request of the shipper or consignee of interstate freight, weighs such freight so consigned for such shipper or consignee, and for such service is paid by the consignor or consignee a fixed sum; and it also weighs all interstate freight consigned to the Stock Yard Company as consignee, such as hay, corn, and other products necessary for the use of the Stock Yard Company in the operation of its stock yards and in the feeding or caring for the cattle and live stock coming into or passing through such yards. The Stock Yard Company pays the Junction Company for this service, and the Junction Company's report of the weight frequently constitutes the basis upon which the freight charges are assessed against the consignor or consignee by the trunk-line railroad delivering such freight to the Junction Company for final delivery. Such shipments move from points of origin, which in many instances are outside the State of Illinois, to the stock yards on through bills of lading.

(l) That the method and manner in which the Junction Company handles all kinds of freight, whether inbound or outbound or
23 whether moving through Chicago over the tracks of the said Junction Company, as hereinbefore set out, is the same method and manner adopted and performed by the Stock Yard Company in handling the same kind and character of freight prior to the time it leased its lines of railroad to the State Line Company and which were subsequently leased to the Junction Company.

IX.

Your petitioner further alleges that when the trunk-line railroads bring live stock to the stock yards, the waybills accompanying said shipments are handed by the employees of the trunk-line railroads transporting the stock to the stock yards to the employees of the Stock Yard Company, with what is termed a "live-stock stub" attached. Such waybills are taken by employees of the Stock Yard Company to unload and count the animals in each car, and then the

waybills, together with the stub, are sent by the employees of the Stock Yard Company to the office of the auditor of the Stock Yard Company; the live-stock stub is retained by such auditor, and the original waybill is delivered to the local agent of the trunk-line railroad delivering the stock at the stock yards, for its record. The charges appearing on the waybills are collected by the Stock Yard Company from the consignees, who are generally commission men doing business at the stock yards, on the basis of the charges shown in the live-stock stub. The Stock Yard Company advances to the trunk-line railroads all charges, and twice a week it collects from the consignees the moneys it has advanced to the trunk-line railroads for the transportation of the stock from points outside the State
24 to the stock yards. The person who acts as auditor of the Stock Yard Company also acts as auditor of the Junction Company.

X.

Your petitioner further alleges that the Junction Company has published tariffs showing the charges which it exacts and collects for its services in the transportation of property, as hereinbefore set forth, and also the charges that it makes for freight handled and transported by it in the method hereinbefore set out and delivered to it at the Union Freight Station hereinbefore referred to; that the tariffs referred to are in general circulation in and about the city of Chicago, and especially in and around the stock-yard district, but said tariffs have not been published and filed with the Interstate Commerce Commission under and in accordance with the terms and conditions provided in section 6 of the act to regulate commerce; that the said Junction Company, by reason of the facts hereinbefore set forth, is a common carrier engaged in the transportation of property by railroad from points in the State of Illinois to points in other States of the United States, and to points in the Territories of the United States and in the District of Columbia, and is a common carrier engaged in the transportation of property by railroad from points in other States of the United States and from points in the Territories of the United States and the District of Columbia, to points in the State of Illinois; that the respective trunk-line railroads engaged in the transportation of property by railroad from points in other States to points on the lines of railroad operated by the Junction Company, and which property
25 when it reaches the lines of railroad operated by the Junction Company is handled in one or more of the methods hereinbefore set out, have published and now have on file with the Interstate Commerce Commission, their respective tariffs which show the charges exacted by said trunk-line railroads for the services performed by them, and which show the charges of the Junction Company for the service performed by said Junction Company, as hereinbefore set out; that said Junction Company, however, does not concur or join in said tariffs and is in no way a party to said tariffs,

as required by section 6 of the act to regulate commerce; that by reason of the acts of said Junction Company as hereinbefore set forth in this bill, relating to its handling of all kinds of freight, whether dead freight or live stock, whether in carloads or less than carloads, said Junction Company is a common carrier engaged in the transportation of property from points in various States and Territories and the District of Columbia to points on its line of railroad in the State of Illinois, and from points on its line of railroad in the State of Illinois to points in the various States and Territories of the United States, and that said Junction Company has not filed with the Interstate Commerce Commission, created by the act to regulate commerce, nor does it keep open to public inspection its schedule showing all rates and charges for transportation between different points on its own road and between points on its own road and points on the road of any other carrier by railroad, and that said Junction Company is engaged in the transportation of property

26 from points in the various States and Territories of the United States to points in the State of Illinois, and from points in the State of Illinois to points in the various States and Territories of the United States, without having filed and published a schedule of its rates and charges for such transportation, in accordance with the provisions of the act to regulate commerce, and more particularly section 6 thereof.

That the Stock Yard Company is the actual owner of the lines of railroad operated by the Junction Company and holds the legal title thereto in its proper corporate name, and, in addition, owns the rolling stock delivered by it to the State Line Company, and in turn delivered to the Junction Company; and by reason thereof said Stock Yard Company is in fact the owner of a railroad engaged in the transportation of property by railroad from points in the various States and Territories of the United States and in the District of Columbia to points on its line of railroad in the State of Illinois, and is engaged in the transportation of property from points on its line of railroad in the State of Illinois to points in the various States and Territories of the United States and the District of Columbia; that said Stock Yard Company does not file with the Interstate Commerce Commission, created by the act to regulate commerce, and print and keep open to public inspection its schedules showing its rates and charges for transportation between the different points on its own road and between points on its own road and points on the line of any other carrier by railroad; that said Stock Yard Company not only fails to file and publish schedules of its rates and charges aforesaid, but it does not concur in the tariffs of any other railroads that contain the rates and charges of said Stock Yard Company.

27 That the Stock Yard Company has at all times, and now has, full knowledge as to the nature of the transportation, as hereinbefore set out, carried on by the Junction Company; that

during all the time the Junction Company has operated the lines of railroad owned by the Stock Yard Company the Stock Yard Company has had full knowledge that the Junction Company did not file with the Interstate Commerce Commission the schedules of the rates, fares, and charges exacted by the Junction Company in the transportation of property, as hereinbefore set out, in accordance with the provisions of section 6 of the act to regulate commerce; and with that knowledge the said Stock Yard Company has suffered and permitted the Junction Company to use and operate the lines of railroad owned by the Stock Yard Company and to perform the transportation services, as hereinbefore set out, without requiring or attempting to require or in any way calling upon the Junction Company to file tariffs with the Interstate Commerce Commission, in accordance with section 6 of the act to regulate commerce, showing the rates, fares, and charges exacted by the Junction Company for the transportation performed by said Junction Company, as hereinbefore set out.

XI.

Your petitioner further alleges that under and by virtue of Exhibit D, hereinbefore referred to, the Junction Company pays to the Stock Yard Company, as rental for the lines of railroad owned by said Stock Yard Company and operated by the Junction Company, two-thirds of the entire net earnings and revenue re-
28 ceived by the Junction Company from the operation of said lines of railroad; that by reason of said provision the income derived by the Stock Yard Company for the use of its railroad depends upon the amount of business transacted by the Junction Company, and that all increase in the volume of property transported by the Junction Company inures to the benefit of the Stock Yard Company in proportion to the percentage of the net earnings to which it is entitled under said written instrument.

XII.

Your petitioner further alleges that the defendant, The Chicago Junction Railways and Union Stock Yards Company (herein called the "Investment Company"), was organized in July, 1890, under the laws of the State of New Jersey, as an investment company for the purpose of acquiring and holding the shares of the Stock Yard Company, as will appear by reference to its charter, hereinbefore referred to as Exhibit B; that immediately upon organization of the said Investment Company in 1890 it acquired and became the owner of, and is now the owner of, over 90 per cent of the shares of the capital stock of the Stock Yard Company, and that said Investment Company owns all the shares of the capital stock of the Junction Company except a few necessary to qualify directors; that substantially all the income and earnings of the Investment Company

are derived from the earnings and dividends on the stock of the Union Stock Yards Company and the Junction Company; that substantially all of the property owned by the Investment Company consists of the stock of the Stock Yard Company and the stock of the Junction Company.

29 XIII.

Your petitioner further alleges that the defendants, David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, are a copartnership trading under the firm name and style of Louis Ffaelzer & Sons, and are engaged in the business of buying, slaughtering, and selling for general consumption live stock, including cattle, sheep, and hogs, and in the manufacture and sale of packing-house products; that their present place of business is located in the city of Chicago, Cook County, Ill., in what is known as the stock-yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yard Company. Said firm, in the prosecution of its business, purchases live stock at the stock yards; said firm also purchases live stock, including cattle, sheep and hogs, at points outside the State of Illinois, which it ships from said points to the stock yards, the said shipments moving from points of origin on through bills of lading over the lines of the Junction Company, in connection with the originating trunk-line carriers; that the live stock so purchased, as before stated, is slaughtered in the packing house of said firm. As a result of such business, more cattle are shipped in than would otherwise be shipped in to the said stock yards; that all the live stock shipped into the stock yards, as aforesaid, and purchased, slaughtered, and manufactured by said firm, is shipped into the stock yards over lines of railroad owned by the Stock Yard Company and operated by the Junction Company, and the dressed meats, both fresh and cured, and the manufactured packing-house products are by said Louis Pfaelzer & Sons shipped
30 out over the lines of railroad owned by the Stock Yard Company and operated by the Junction Company, in connection with the trunk-line railroads, to points in other States, and moved on through bills of lading, in the same manner that all freight is handled in and out of said stock yards, as hereinbefore alleged.

That the said defendants doing business under the firm name and style of Louis Pfaelzer & Sons have entered into a certain contract or agreement with the Stock Yard Company, a copy of which is hereto attached, marked "Exhibit E," and made a part hereof; that said contract is now in process of performance and will, unless restrained by this court, be carried out. As a result of such contract and in accordance with the terms and provisions thereof the Stock Yard Company will pay to Louis Pfaelzer & Sons the sum of $50,000, and the performance of said contract has been guaranteed by the Investment Company, and in default of payment of said sum by the

Stock Yard Company said sum of money will be paid to Louis Pfaelzer & Sons by the Investment Company.

Your petitioner further avers that such payment, although ostensibly a payment for the purpose of encouraging, developing, and retaining at or near the stock yards in Chicago the business of said Louis Pfaelzer & Sons, which will increase the amount of interstate freight coming in and going out from the yards of said Stock Yard Company and over the lines of railroad owned by said Stock Yard Company and operated by said Junction Company, and likewise increase the yardage to be collected by said Stock Yard Company on live stock and its charges for feed, and also increase the earnings of the
31 Junction Company by increasing the amount of property transported by the Junction Company in interstate commerce over the lines of railroad owned by the Stock Yard Company, and thus increase the rentals of the Stock Yard Company accruing from the earnings derived from the transportation of property in interstate commerce by railroad under said lease to the Junction Company; that the said payment by the Stock Yard Company to Louis Pfaelzer & Sons of the amount of money in accordance with the terms of said contract will in substance and effect be a payment by the Stock Yard Company, as the owner of a railroad engaged in interstate commerce, as defined in the act to regulate commerce, to a shipper or consignee of freight moving in interstate commerce over said lines of railroad owned by said Stock Yard Company, and said payment will in fact constitute a payment of money by the owner of a railroad and a common carrier engaged in the transportation of property by railroad between points in the various States of the United States to a shipper of property transported between points in the various States of the United States and over said line of railroad whereby such shipper has his property transported in interstate commerce by railroad at less rates and charges than are exacted by said common carrier by railroad from other persons moving property of the same character and description between the same points at the same time; that in making the payment as aforesaid the said Stock Yard Company, as the owner of a railroad engaged in interstate commerce and subject to the act to regulate commerce, will take its share of the earnings of the Junction Company, derived by the latter in transporting property in interstate commerce over
32 the lines of railroad owned by the Stock Yard Company, and by said Junction Company paid to the Stock Yard Company, to use in making payment to Louis Pfaelzer & Sons of the amount named in said contract.

Your petitioner further alleges that the payment of said amount of money to Louis Pfaelzer & Sons, in accordance with the terms of said contract, will constitute in effect a rebate and an unlawful discrimination, in violation of section 2 of the act to regulate commerce; and will in effect constitute a device whereby an undue advantage will be given to, and an unlawful discrimination will be practiced in favor of, the said Louis Pfaelzer & Sons by the said Stock Yard Company

in the transportation of the property of the said Louis Pfaelzer & Sons in interstate commerce over the lines of railroad owned by said Stock Yard Company, and will in fact also constitute a concession, rebate, and an unlawful discrimination, whereby the property of the said Louis Pfaelzer & Sons is by device transported in interstate commerce over the lines of railroad owned by said Stock Yard Company at less charges than are exacted from other shippers for the same service between the same points, and at less than the tariff charges therefor, which it is the duty of the Stock Yard Company and the Junction Company to publish and file with the Interstate Commerce Commission; and will in fact constitute a violation of the act of Congress approved February 19, 1903, and as amended June 29, 1906, commonly known as the "Elkins law."

Your petitioner further alleges that by reason of the facts hereinbefore stated, the Stock Yard Company is the owner of a rail-
33 road engaged in the transportation of property from points in the various States and Territories of the United States to points on its line of railroad in the State of Illinois, and from points on its line of railroad in the State of Illinois to points in various States and Territories of the United States, and is engaged in the transportation of property by railroad between points on its line of railroad in the State of Illinois to points in other States and Territories of the United States, and from points in the various States and Territories of the United States to points on its line of railroad in Illinois; that by reason of the facts hereinbefore stated the Junction Company is a common carrier engaged in the transportation of property by railroad between points in the several States and Territories of the United States and points on its line; that by reason of the facts hereinbefore set forth the Stock Yard Company and the Junction Company are obligated and required to file with the Interstate Commerce Commission the rates and charges exacted by each or all of them in the manner hereinbefore set out, in accordance with the provisions of section 6 of the act to regulate commerce; that by reason of the facts hereinbefore stated, said Stock Yard Company and the said Junction Company are each required to file with the Interstate Commerce Commission reports and monthly statements provided for in section 20 of the act to regulate commerce, and in accordance with the rules and regulations prescribed by the commission in relation thereto, which said reports and statements said defendants last named failed and refused, and still fail and refuse, to file.

34 XIV.

Your petitioner further alleges that the said Stock Yard Company and the Investment Company will, unless restrained by this court, carry out the terms and provisions of the contract hereinbefore referred to as "Exhibit E"; that unless restrained by this court the said Investment Company will enter into an independent contract in its own behalf, of the same nature and character of said Exhibit E,

whereby said Investment Company will pay to said defendant Louis Pfaelzer & Sons the amount of money named in said Exhibit E, upon the performance of the terms and conditions required of said Louis Pfaelzer & Sons by said new contract, which will contain the same covenants as contained in said Exhibit E; that said contract referred to as "Exhibit E" is by its terms required to be performed in Chicago, Cook County, Ill., and if said Investment Company and the said defendants Louis Pfaelzer & Sons enter into an independent contract for the payment of the money provided for in said Exhibit E, said new contract will by its terms require performance in the county of Cook and the State of Illinois; that the payment of said $50,000, or any part thereof, by the said Investment Company to said Louis Pfaelzer & Sons under said Exhibit E, or under any independent contract of similar import made between said Investment Company and said Louis Pfaelzer & Sons, will in fact constitute a violation of section 2 of the act to regulate commerce and of the act of Congress approved February 19, 1903, and as amended June 29, 1906, commonly known as the "Elkins law."

35

XV.

That the said defendant Investment Company owns at least 90 per cent of the stock of the Stock Yard Company, and practically all of the stock of the Junction Company, and therefore controls the management of the Junction Company and the Stock Yard Company; that the Investment Company, the Stock Yard Company, and the Junction Company are all practically under the same management and control, and that the interests of the three defendants named are practically one and the same, and if the Investment Company enters into an independent contract with Louis Pfaelzer & Sons, the said contract by the Investment Company will be made for and in behalf of the Stock Yard Company.

XVI.

Wherefore this petitioner prays that a subpœna or civil process may issue according to the course of equity, requiring the abovementioned defendants and each of them to appear at such time and place as this honorable court may determine, and then and there make full and complete answer of all the matters hereinbefore charged, full and particularly as if each of said defendants were specially interrogated in regard thereto, but not under oath, the answer under oath being hereby specifically waived; that upon the filing of this petition an order be made by your honorable court directing the method of service and pendency of this proceeding; that such order or orders may be entered pending the cause as may secure a speedy hearing and determination of the matters and things

36 charged in the foregoing bill of complaint; that such order or orders may be entered pending the cause as are necessary to procure all such information that the court may think needful to

enable it to form a just judgment of the matters and things charged in the foregoing bill of complaint; that upon final hearing said Stock Yard Company and the said Junction Company be enjoined and restrained from and after such date as may be fixed by the court from engaging in the transportation of property in interstate commerce, as hereinbefore set out in this bill, until they and each of them have filed lawful tariffs with the Interstate Commerce Commission in conformity with section 6 of the act to regulate commerce, showing the charges demanded, collected, and received by them and each of them for the services performed, as hereinbefore set out, in the transportation of property in interstate commerce, as hereinbefore set out; or that the court issue a mandatory injunction requiring the said defendants to file with the Interstate Commerce Commission lawful tariffs in conformity with section 6 of the act to regulate commerce, showing the charges demanded, collected, and received by them and each of them for the services performed, as hereinbefore set out, in the transportation of property in interstate commerce, as hereinbefore set out, if in the judgment of the court said peremptory or mandatory injunction is deemed proper to secure compliance on the part of said defendants with the act to regulate commerce; that upon final hearing said Stock Yard Company be permanently restrained and enjoined from carrying out the terms and provisions of its contract made with the said defendants Louis Pfaelzer
37 & Sons, and the individual members of said copartnership, as hereinbefore named in the bill; and that said Stock Yard Company be restrained and enjoined from paying to said Louis Pfaelzer & Sons, or to the individual members of said firm, or any one of them, their successors and assigns, the sum of money therein designated, or any part thereof; that the said Investment Company be permanently enjoined and restrained from carrying out the terms and provisions of said contract hereinbefore referred to as "Exhibit E," under its written guaranty therefor, and that it be restrained and enjoined from paying to the said Louis Pfaelzer & Sons, or to the individual members of said firm, or any one of them, their successors and assigns, the sum of money designated in said contract, or any part thereof; that the said David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, doing business as Louis Pfaelzer & Sons, and the said firm of Louis Pfaelzer & Sons, and each and all of them, their successors and assigns, be restrained and enjoined from accepting from the Stock Yard Company or the Investment Company the sum of money designated in said contract, or any part thereof; and that the said Investment Company and the said Louis Pfaelzer & Sons, the individual members of said firm, or any one of them, their successors and assigns, be restrained and enjoined from entering into a separate contract providing for the payment of said sum of money referred to in said Exhibit E, or any part thereof, and that they be enjoined and restrained from entering into a contract of the same nature as Exhibit E; that upon final hearing said Stock Yard Company and said Junction Company be ordered and required to file

the reports and statements provided for in section 20 of the act to regulate commerce, and such other reports and statements as
38 may be required under the rules and regulations adopted by the Interstate Commerce Commission, in conformity with the provisions of said section; that a decree be entered therein requiring the defendants, and each of them, to pay the cost of this proceeding; and your petitioner prays for such other and further relief as the court may find equitable and just in the premises.

GEO. W. WICKERSHAM,
Attorney General.
WM. S. KENYON,
Assistant to the Attorney General.
WILLIAM E. LAMB,
Special Assistant to the Attorney General.
EDWIN W. SIMMS,
United States Attorney.

WASHINGTON, *District of Columbia, ss:*

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, having read the foregoing bill of complaint, and knowing the contents thereof, hereby make oath that the matters and facts therein stated are true to the best of my knowledge, information, and belief.

EDWARD A. MOSELEY,
Secretary of the Interstate Commerce Commission.

Subscribed and sworn to before me, H. S. Milstead, a notary public in and for the District of Columbia, this 8th day of June, A. D. 1910.

(Notarial seal.)

H. S. MILSTEAD,
Notary Public.

39 EXHIBIT A.

Charter.

An act to incorporate the Union Stock Yard and Transit Company of Chicago.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That John L. Hancock, Virginius A. Turpin, Roselle M. Hough, Sidney A. Kent, Charles M. Culbertson, Lyman Blair, David Kreigh, Joseph Sherwin, Martin L. Sykes, jr., George W. Cass, James F. Joy, John F. Tracy, Timothy B. Blackstone, Joseph H. Moore, John S. Barry, Homer E. Sargent, Burton C. Cook, John B. Drake, William D. Judson, and such other persons as may associate with them for that purpose, be, and the same are hereby, made a body politic and corporate, by the name and style

of "The Union Stock Yard and Transit Company of Chicago," with perpetual succession; and by that name and style may contract and be contracted with, sue and be sued, have a common seal, which they may alter and revise at pleasure, and may have and exercise all the rights, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act, as the same are herein set forth.

SEC. 2. That said company shall have the power to locate, construct, and maintain upon the land purchased for such purpose, in convenient proximity to the southerly limits of the city of Chicago and west of Wallace Street as the same would be extended in a straight line south from said city limits, all the necessary yards, inclosures, buildings, structures, and railway lines, tracks, switches, and turn-outs, aqueducts, for the reception, safe-keeping, feeding, and watering, and for the weighing, delivery, and transfer of cattle and live stock of every description, and also dead and undressed animals that may be at or passing through or near the city of Chicago, and for the accommodation of the business of a general union stock yard for cattle and live stock, including the erection and establishment of one or more hotel buildings, and the right to use the same, if deemed expedient, for the convenience of drovers, dealers, and the public doing business at the said yards; and shall have power to repair, enlarge, relocate, reconstruct, and alter the said yards, structures, and buildings, or any of them, as shall become necessary or expedient from time to time, subject, nevertheless, to the restrictions above mentioned as to the location of the same, and shall have the right and power to make advances of money upon such cattle and live stock, for freight or other purposes, as may become expedient, and for such care, subsistence, and handling and advances made upon such stock, the said company may take and require to be paid such reasonable charges as may be deemed just and proper, and shall have the power to lease the public house or hotel building so erected for the accommodation of those drawn together by the business of such yards upon such terms and conditions as shall be deemed proper, or to make such other arrangements for the management thereof as may be deemed advisable from time to time; and, if the same shall be kept and managed by said company, shall have the power to fix and require to be paid such reasonable charges for the accommodation afforded by said house or houses as shall be just and proper.

SEC. 3. That said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be selected for its said yards, so as to connect, outside of the city of Chicago, the same with the tracks of all the railroads which terminate in Chicago, the lines of which enter the city on the south between the lake shore and the southwest corner of said city, and on the west between said last-named point and the north line of section number nineteen (19), township number thirty-nine (39) north, range fourteen (14) east of the third principal meridian, and shall have the

right and power to make such connections with such suitable side tracks, switches, and connections as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks of such company or companies which now is or hereafter may be constructed, for the purposes aforesaid, as may be agreed upon between the parties; and shall have the power and authority to locate, and, from time to time, renovate, change, alter, construct, and reconstruct, and fully to finish and maintain its said railroad or roads, side tracks, and connections, and to transport and allow to be transported thereon between said railroads and cattle yards, all cattle and live stock and persons accompanying the same to and from said yards, and may also transport and allow to be transported between the railroads entering said city, and so connected by the road or roads hereby authorized, by steam or other power, freight and property of every kind as well as stock and cattle, and may fix and establish, take and receive, such rates of toll for all freight and property so transported between said several railroads as the directors shall, from time to time, establish: Provided, all fees and charges for freights, hotel bills, feeding, carrying, and everything done by reason of the powers herein given, shall be subject to any general law that may be passed by the legislature of this State, in reference to stock yards or railroads; and for the purpose of
41 constructing said railroad and appurtenances, shall have the authority and power to lay out, designate, and establish the road, in width not exceeding one hundred feet through the entire line thereof, and to mark out and designate the ground for such yard and other structures, and may acquire such lands, which may be necessary for the purpose of constructing said tracks, either by purchase or in the manner hereinafter provided, with the right to let or demise the real estate and property so acquired, and improvements thereon; and shall also have the right and authority to take a lease or leases of ground for said yards, upon such terms as the directors of said company may deem just and reasonable, and all contracts and agreements made in connection with such lease or leases, shall be valid and binding upon the parties thereto; and said company shall have the right, with the consent of the proper authorities having control thereof, to locate or construct its roads across any street or highway, doing as little damage and discommoding the public as little as may be consistent with the use of said track so laid.

SEC. 4. The said company shall have power and authority to receive, take, and hold all such voluntary grants and donations of land and real estate as may be made to said company, for the purpose aforesaid, and may contract and agree with the owners and occupiers, of any land which may be necessary for such purposes, or which said company may desire to use in connection therewith, in order to carry out the objects of its organization; and said company

is authorized and empowered to receive and take grants and conveyances of all interests and estates in such lands to them and their successors and assigns in fee or otherwise, and in case the said company can not agree with the owners or occupiers of lands, necessary for the railroad tracks herein permitted to be constructed, so as to procure the same by the voluntary deed of such owners or occupiers, or if such owners or occupiers or any of them be a femme covert, infant non compos mentis unknown or out of the county of Cook, the same may be taken for the purpose of constructing said railroad track (but for no other purpose) and paid for, if any damages are awarded, in the manner provided for in the "act to amend the law condemning the right of way for purposes of internal improvement," approved June 22, A. D. 1852, and the acts amendatory thereof, to the benefits of all the rights, privileges, franchises, and immunities contained in the provisions of which said act and the amendments thereof, said company shall be, and are hereby, declared entitled.

SEC. 5. The capital stock of said company shall be one million of dollars, which stock shall be divided into shares of one hundred dollars each, which shall be deemed personal property, and may be taken and held by individuals, and may be issued to such persons, and certified, transferred, and registered in such manner and in such places as may be ordered and provided for by the board
42 of directors, who shall have the power to require the payment for the stock subscribed, in the manner, at the time, and in such terms as they may direct; and the same may be paid for in real estate or in personal property, under the direction of said board of directors, who shall also have power to declare dividends upon profits earned by said company. On the refusal or neglect of any stockholder to make payment on the requisitions of the board of directors, the share or shares of such delinquent may, after thirty days' public notice in one of the daily newspapers of Chicago, be sold at public auction, under such rules as the directors may adopt.

SEC. 6. The corporate powers of said company shall be vested in and exercised by a board of directors, to consist of not less than five nor more than nine in number, and such other officers, agents, and servants as they shall appoint. The first board of directors shall consist of Martin L. Sykes, Jacob N. McCullough, James F. Joy, John F. Tracy, Timothy B. Blackstone, John L. Hancock, Roselle M. Hough, Charles M. Culbertson, and Virginius A. Turpin, who shall hold their office until the third Wednesday of January, A. D. 1866, and until their successors are elected and qualified. Vacancies in said board may be filled by a vote of two-thirds of the directors remaining, such appointees to continue in office until the next regular annual election of directors, and which said annual election shall be held on the third Wednesday of January in each year at such place as the directors may appoint, thirty days' notice being given in one newspaper in Chicago of the time and place of such election.

SEC. 7. At any election of directors, each share of stock shall be entitled to one vote, to be given either in person or proxy, and the person receiving the largest number of votes to be declared duly elected and to hold the office until the next annual election and until their successors shall be duly qualified: and if, for any cause, the annual election shall fail the company shall not be dissolved, but the directors in office shall continue to hold their places as directors until an election shall be had and their successors duly elected and qualified.

SEC. 8. The directors herein named shall organize their board by electing one of their number president, and by appointing a secretary and treasurer. The said company shall have power to make, ordain, and establish by-laws, rules, and regulations necessary to fulfill the purposes and carry into effect the provisions of this act and for the well ordering and securing the affairs, business, and interests of the company, provided the same shall not be repugnant to the Constitution and laws of the United States or of this State.

SEC. 9. Should it be necessary for the construction of the road or roads hereby authorized to be built to cross any water course, stream of water, or road, it shall be lawful, under the direc-
43 tion of the proper authorities having control thereof, to construct the said road upon or across the same, provided the same shall be so constructed as not to unnecessarily impair the usefulness of said road or water course.

SEC. 10. The said company is hereby authorized, from time to time, to borrow such sums of money as it may deem expedient, and to issue and dispose of their bonds therefor in denominations of not less than five hundred dollars each, and to an amount which, in the aggregate, shall not exceed five hundred thousand dollars and bearing such rate of interest, not exceeding ten per cent, as the company shall deem expedient, and to secure the payment of the same may execute a mortgage or deed of trust of all its property of every description, in possession or to be acquired, with such terms, stipulations, and conditions as may be deemed expedient.

SEC. 11. Nothing in this act contained shall be deemed, taken, or construed as conferring upon the company hereby created any powers or authority to maintain or operate a railroad for the conveyance of passengers or freight in the city of Chicago. And the said company hereby incorporated is hereby expressly prohibited from making any contract or having any agreement, either expressed or implied, with any railroad company to receive cattle, hogs, or other freight transported over the road of any such railroad company, to the exclusion of any person or corporation having a stockyard in proximity to said city; and said company hereby incorporated shall not receive any cattle, hogs, or other stock consigned to any other person or company having a stockyard in proximity to said city; and any willful violation of any of the provisions of this act by the company hereby incorporated shall work an absolute forfeiture of all the rights, privi-

leges, and immunities conferred by this act, and the franchises hereby conferred shall become utterly void.

SEC. 12. This act shall be deemed a public act, and shall be in force from and after its passage.

ALLEN C. FULLER,
Speaker of House of Representatives.
WILLIAM BROSS,
Speaker of the Senate.

Approved February 13, 1865.

RICHARD J. OGLESBY.

44 EXHIBIT B.

Certificate of organization of the Chicago Junction Railways and Union Stock Yards Company.

STATE OF NEW JERSEY, *ss:*

This is to certify that we, William J. Sewell, John Hoey, William C. Lane, Alric R. Herriman, George H. Taylor, Daniel P. Griswold, Augustus Fielding, Arthur L. Shipman, and Arthur H. Gregory, do hereby associate ourselves into a company, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act concerning corporations," approved April 7th, 1875, and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First. The name which we have assumed to de-ignate such company and to be used in its business and dealings is "The Chicago Junction Railways and Union Stock Yards Company."

Second. The place in this State where the business of such company is to be conducted is Jersey City, in the county of Hudson. The principal part of the business of said company within this State is to be transacted at Jersey City, in the county of Hudson. The principal office and place of business of said company out of this State is to be situated in the city of New York, in the State of New York.

Third. The objects for which the company is formed are to purchase, hold, pledge, transfer, sell, or otherwise dispose of or deal in the shares of the capital stock of The Union Stock Yard and Transit Company, a corporation organized under the laws of the State of Illinois; to receive, collect, and dispose of the dividends on any of said shares held by it, and to exercise in respect of any of said shares held by it any and all the rights, powers, and privileges of owners of shares of said capital stock; to purchase, hold, and dispose of any bonds, debentures, or other evidences of indebtedness of said The Union Stock Yard and Transit Company, and to do any and all acts and things tending to increase the value of the shares of the capital stock of said company; to issue bonds and to secure the same
45 by a pledge or deed of trust of or upon any part of such shares

or any other property held or owned by the company, and to sell or pledge such bonds for proper corporate purposes, and in the promotion of its corporate business to purchase, receive, hold, and dispose of any securities of any person or corporation, whether such securities shall be bonds, mortgages, debentures, notes, or shares of capital stock, and in respect of any such securities to exercise any and all the rights and privileges of owners thereof, and to the extent authorized by law to lease, purchase, hold, sell, assign, mortgage, and convey real and personal property of any name and nature: Provided, That nothing herein contained shall be construed as being intended to form an insurance company, a banking company, a savings bank, a corporation intended to derive profit from the loan and use of money, a water company, a manufacturing company, a railroad company, turnpike company, or any company needing to possess the right of taking and condemning land.

Fourth. The portion of the business of said company which is to be carried on out of this State is to purchase, hold, pledge, transfer, sell, or otherwise dispose of or deal in the shares of the capital stock of said the Union Stock Yard and Transit Company; to receive, collect, and dispose of the dividends on any of said shares held by it, and to exercise in respect of any shares in said company any and all the rights, powers, and privileges of owners of shares of said capital stock; to purchase, hold, and dispose of any bonds, debentures, or other evidences of indebtedness of said company; to do any and all acts and things tending to increase the value of the shares of the capital stock of said company; to issue bonds secured by a pledge or deed of trust of or upon any of such shares or any other property held or owned by the company, and to sell or pledge the same for proper corporate purposes and in the promotion of its corporate business; to purchase, receive, hold, and dispose of any securities of any person or corporation, whether such securities shall be bonds, mortgages, debentures, notes, or shares of capital stock, and in respect of any such securities to exercise any and all the rights and privileges of owners thereof, and to the extent authorized by law to lease, purchase, hold, sell, assign, mortgage, and convey real and personal property of any name and nature.

The company proposes to carry on operations in the States of New York and Massachusets, and the other States of the United States, and in England.

Fifth. The total amount of the capital stock of said company is to be thirteen million dollars, and the number of shares into which the same is to be divided is 130,000. Of said stock six million five hundred thousand dollars, divided into 65,000 shares of $100 each,
46 shall be general or common stock, and six million five hundred thousand dollars, divided into 65,000 shares of $100 each, shall be preferred stock. Said preferred stock shall entitle the holder to receive in each year out of the net earnings of the company a fixed yearly dividend of six per cent payable half yearly before any dividends shall be paid upon or set apart for said general or common stock.

The dividends on the preferred stock shall be cumulative, so that if in any year dividends amounting to six per centum shall not be paid on said preferred stock the deficiency shall be a charge upon the net earnings of the company and be payable subsequently before any dividends shall be paid upon or set apart for the general or common stock. The balance of the net profits of the company, after the payment of the cumulative dividends of six per cent per annum to the holders of preferred stock, shall be distributed as dividends among the holders of the general or common stock as and when the board of directors shall determine. The holders of preferred stock shall, in case of liquidation or dissolution of the company, be entitled to be paid in full both the principal of their shares and the accrued dividend charge before any amount shall be paid to the holders of the general or common stock. The board of directors of the company may issue such preferred stock and the certificates therefor when and as the board shall by resolution determine.

Sixth. The amount of capital stock with which said company will commence business is twenty-five thousand dollars, divided into one hundred and twenty-five shares of said preferred stock of the par value of $100 each and one hundred and twenty-five shares of said general or common stock of the par value of $100 each.

Seventh. The names and residences of the stockholders and the number of shares held by each are as follows:

	Preferred shares.	Common shares.
William J. Sewell, Camden, N. J.	25	25
John Hoey, Hollywood, N. J.	25	25
William C. Lane, city, county, and State of New York	15	15
Alric R. Herriman, city, county, and State of New York	15	15
George H. Taylor, city, county, and State of New York	15	15
Daniel P. Griswold, city, county, and State of New York	10	10
Augustus Fielding, city, county, and State of New York	10	10
Arthur L. Shipman, city, county, and State of New York	5	5
Arthur H. Gregory, city, county, and State of New York	5	5

47 Eighth. The period at which said company shall commence is the 10th day of July, 1890, and the period at which it shall terminate is the 10th day of July, 1940.

In witness whereof we have hereunto set our hands and seals the 8th day of July, 1890.

W. J. Sewell. [L. S.]
John Hoey. [L. S.]
Wm. C. Lane. [L. S.]
Alric R. Herriman. [L. S.]
George H. Taylor. [L. S.]
Daniel P. Griswold. [L. S.]
Augustus Fielding. [L. S.]
Arthur L. Shipman. [L. S.]
Arthur H. Gregory. [L. S.]

Signed, sealed, and delivered in the presence of—

BENJ. D. SHREVE,
By W. J. SEWELL.
WM. D. GUTHRIE,
29 Nassau Street, New York.
(As to all except Sewell and Hoey.)
JOSEPH B. BRAMAN.
(As to Hoey.)

STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph B. Braman, a commissioner of deeds for the State of New Jersey, residing in the county and State of New York, do certify that on this eigth day of July, in the year one thousand eight hundred and ninety, in the city and county of New York aforesaid, before me personally appeared John Hoey, William C. Lane, Alric R. Herriman, George H. Taylor, Daniel P. Griswold, Augustus Fielding, Arthur L. Shipman, and Arthur H. Gregory, who I am satisfied are eight of the individuals named in and who executed the foregoing certificate, and the contents thereof being by me first made known to them, they severally acknowledged to me that they had signed, sealed, and delivered said instrument as their voluntary act and deed.

In witness whereof I have hereunto set my hand and official seal at the city of New York, in the county and State aforesaid, this eighth day of July, one thousand eight hundred and ninety.

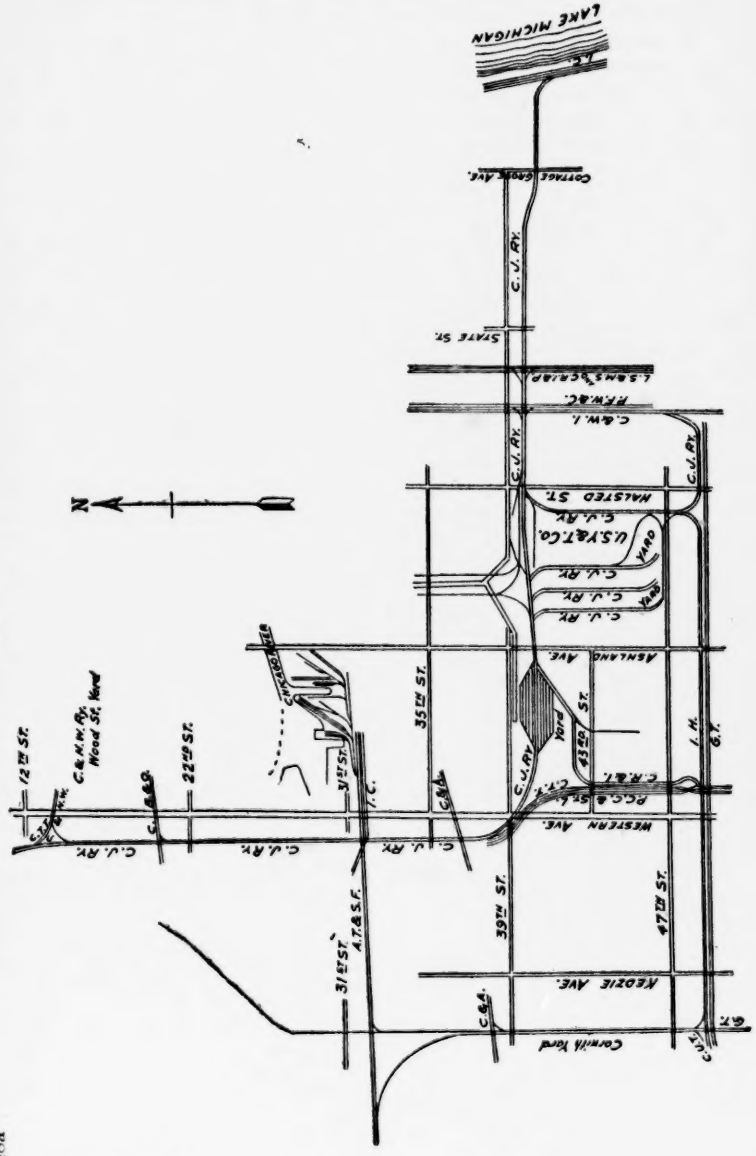
[SEAL.] JOSEPH B. BRAMAN,
Commissioner of Deeds for the State of New Jersey, in and for the State of New York, resident in said City of New York.

48 STATE OF NEW JERSEY,
County of Camden, ss:

Be it remembered that on this eighth day of July, eighteen hundred and ninety, before me, Benjamin D. Shreve, a master in chancery of New Jersey, duly authorized to take acknowledgments, personally appeared William J. Sewell, who I am satisfied is one of the persons named in and who executed the foregoing certificate, and I having first made known to him the contents thereof, he did acknowledge to me that he had signed, sealed, and delivered the same as his voluntary act and deed.

BENJAMIN D. SHREVE, M. C. C.

EXHIBIT "C."



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49 EXHIBIT D.

An agreement, made and concluded this fifteenth (15th) day of December, A. D. 1897, by and between the Union Stock Yard and Transit Company of Chicago (hereinafter for convenience called the "Yards"), party of the first part, and the Chicago and Indiana State Line Railway Company (hereinafter for convenience called the "Railroad"), party of the second part, bears witness:

Whereas the parties hereto are severally corporations created and existing under and by virtue of the laws of the State of Illinois and are severally possessed of lines of railroad, and have power under the laws of the State of Illinois, the Yards to grant and demise its right of way, line of railroad, and railroad tracks, and the Railroad the same to take and operate:

And whereas at a meeting of the board of directors of the Yards held on the fourteenth (14th) day of December, A. D. 1897, it was resolved to enter into, execute, and deliver a certain agreement of demise and lease of its line of railroad and railroad tracks unto the Railroad, being this instrument, and thereafter the board of directors of the Railroad, at a meeting called and held on the seventeenth (17th) day of December, A. D. 1897, resolved to take and accept said lease and demise upon the terms and conditions of said grant and the undertakings, covenants, and agreements therein expressed to keep and perform:

And whereas the Railroad has entered into negotiations with the Chicago, Hammond and Western Railroad Company for consolidation with said company or for the acquisition of all and singular the line of railroad, tracks, yards, cars, locomotives, tools, machinery, and other instrumentalities of said Chicago, Hammond and Western Railroad Company, with the purpose and object of extending, by the acquisition thereof, the lines of railroad of the said Chicago and Indiana State Line Railroad Company. Said Chicago, Hammond and Western Railroad Company will hereafter be referred to as the "Chicago Company":

And whereas the acquisition by the Railroad of the railroad tracks and property by this instrument demised, and of the line of railroad property and facilities of the Chicago Company to be acquired by the Railroad, by consolidation or otherwise, and the performance by the Railroad of the covenants in this instrument contained by it to
50 be kept and performed, to enable trains easily and conveniently to approach the stock and cattle yards and appurtenances of the Yards, will enhance the facilities of the public for doing business at the plant of the Yards, and will the better secure to the Yards its business and prompt handling and dispatch of the same:

Now, therefore, in consideration of the premises and one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, and of the mutual covenants, undertakings, and agreements hereinafter recited, by each of the parties hereto severally to be kept and performed, it is hereby mutually covenanted and agreed as follows:

ARTICLE 1. The Yards does hereby grant, demise, and lease unto the Railroad, for the term of fifty years next ensuing after the date hereof, the line of railroad and railroad tracks of the yards, extending from its connection with the tracks of the Illinois Central Railroad Company at or near the shore of Lake Michigan and Forty-third Street, in the city of Chicago, and thence in a general westerly and northerly direction to its terminus in section 19, township 39 N., R. 14 east of the third principal meridian, in the city of Chicago, together with all side tracks, industrial tracks, switches, turnouts, crossovers, appurtenances, railroad yards, yard tracks, storage yards and tracks, repair tracks, roundhouse tracks, machine-shop tracks, and generally all and singular the right of way, railroad and railroad tracks and appurtenances of the yards wherever situate and for what purpose soever the same are used and however held or possessed.

Also, all and singular the roundhouse, repair shops, machine shops, coal chutes, signal houses, telegraph offices, storage houses and places, and the lands upon which the same are built or now used and maintained thereon or held therefor, situate in the city of Chicago, and being generally all those buildings, erections, ways, and places now or heretofore used by the Yards in carrying on and conducting its railroad business or held therefor.

Also, all and singular the locomotives, cars, hand cars, tools, machinery, fixed and movable, and all and singular all other instrumentalities now and prior to the execution and delivery of this instrument used by the Yards in operating or carrying on and conducting its railroad business; also, the telegraph line or lines, poles, wires, instruments, and appurtenances now owned, possessed, or used by the Yards in carrying on and conducting its railroad business, with the right to enlarge and extend the same, and, so far as may be necessary, convenient or proper, to erect upon the lands of the Yards additional poles, wires, and other instrumentalities necessary or useful in and about the maintenance and operation of the telegraph line or lines of said railroad.

51 Also, the right to lay down, maintain, and operate upon the lands of the Yards additional side tracks, switch tracks, industrial tracks, switches, connections, cross-overs, and appurtenances thereof, necessary to reach industrial plants now or hereafter erected; with the right to rearrange, remove, and replace existing yards, side tracks, switch tracks, industrial tracks, switches, connections, and cross-overs, and the same to change, alter, and renew at pleasure, and the right to erect such depots and stations as may be reasonable and necessary:

Together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, with the right, power, and authority solely in the Railroad to operate cars, engines, and trains upon, over, and along the railroad tracks and facilities by this instrument demised, and thereon to pursue the business of a common carrier at and for such tolls, rates, charges, and revenues as the Rail-

road may from time to time impose, collect, and receive: provided, however, the same shall be reasonable.

To have and to hold the above-described premises and property, with the rights, privileges, easements, and appurtenances thereunto attaching and belonging, unto the Railroad for and during the period and term aforesaid; the Railroad yielding and paying therefor unto the Yards the rental hereinafter provided, and faithfully complying with all and singular the terms and conditions upon which the demise herein contained is made.

ARTICLE II. The Yards does hereby assign, transfer, and set over unto the Railroad all its right, title, and interest in and to all and singular the agreements, contracts, or undertakings now existing, providing for or covering the matter of transportation of products or the switching or transferring of cars; also all leases, agreements, or writings in and by which, or upon the terms of which, it holds any part or portion of its right of way or railroad tracks and appurtenances.

ARTICLE III. The grant in this instrument contained is upon the following express conditions:

(a) That the Railroad will, at its own sole cost and expense, keep and maintain the premises and property by this instrument demised in as good order and condition as the same are at the delivery of this instrument, and the same from time to time will renew, repair, and replace, and on the termination of this instrument, however the same may be terminated, will deliver said premises and property to the Yards in as good order and condition as when received, ordinary wear and tear excepted.

(b) That the Railroad will in due season, and as the same become due, pay all taxes and assessments levied, assessed, or imposed by state, city, or other municipal authority, or by the Government of the United States, upon the right of way, railroad, railroad tracks, and all and singular the premises and property by this instru-
52 ment demised, or upon the traffic or business conducted thereon, or upon the income derived from the operation thereof, and hold the Yards forever harmless against the same.

(c) That the Railroad will conduct, operate, and manage, at its own sole cost and expense, the premises and property by this instrument demised in a proper and economical manner, and in such way as to enable trains easily and conveniently to approach the stock and cattle yards and appurtenances of the Yards, and as will secure the prompt handling and dispatch of all business that may be offered upon said line of railroad and appurtenances, or consigned to or from said Yards, and will at all times hold itself in readiness to meet the demands of business offering to, or passing upon, over, and along the said demised tracks or contiguous thereto.

(d) That the Railroad will at the times and in the manner hereinafter mentioned promptly pay the rental by this instrument reserved to be by the Railroad paid to the Yards.

(e) That the Railroad will at all times hold itself in readiness to do, and will do and perform, the duties pertaining to a railroad, or of a railroad character, imposed upon or required by its charter or act of incorporation to be done and performed by the Yards.

ARTICLE IV. The rental to be paid by the Railroad for the premises and property by this instrument demised shall be two-thirds of the entire net earnings and revenue, as hereinafter specified, for the full term of the demise herein contained, derived by the Railroad from the operation of all its lines of railroad and railroad track, now owned or hereafter acquired, including the lines and railroad of said Chicago Company. Said rental shall be payable on demand of the Yards from time to time made, and to that end the Railroad will, on demand of the Yards, submit for examination to the nominee of the Yards its books, papers, vouchers, and documents showing in full and in detail its operations, and will on demand, from time to time, pay over to the Yards all such net earnings or revenue as it may have on hand after paying the cost of operation aforesaid, and deducting or paying the fixed charges upon the lines of railroad of the party of the second part due or accrued at the time of such demand.

ARTICLE V. The Railroad covenants and agrees to take the premises and property in this lease described, for the term and upon the conditions herein expressed, and the same to operate and conduct in the manner above in Article III described, at its own sole cost and expense, and the rental herein reserved to pay or cause to be paid at the times and in the manner in Article IV mentioned and described: further, to operate and conduct said line of railroad in a proper, thorough, and economical manner: to pay all taxes, assessments, and impositions levied, assessed, or imposed by states, city, or other municipal authority, or by the Government of the United
53 States, upon the premises and property in this instrument demised or upon its traffic, business, or income: to accept assignment and transfer of the agreements, contracts, and undertakings in Article II prescribed, and the same to complete, carry out, and perform as in and by said agreements, contracts, and undertakings the Yards has covenanted and agreed: to conduct, manage, and operate the line of railroad of the Chicago company, if the same shall be acquired by it, in connection with and as an extension of its railroad, and the railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to benefit, advantage, and behoof of the business and affairs of the Yards: and that it will maintain the premises and property by this instrument demised, and the same renew, replace, and repair, and, at the expiration of this instrument, the same will deliver and return to the Yards in as good order and condition as when received, ordinary wear and tear excepted.

ARTICLE VI. In arriving at the net earnings and revenue of the Railroad derived from the operation of its railroads and property there shall be deducted from the gross earnings of the Railroad:

(1) The actual cost of materials, supplies, and labor in maintaining, renewing, replacing, repairing, extending, and operating the railroads and property of the Railroad.

(2) The taxes and assessments paid by the Railroad.

(3) Fixed charges upon the lines of railroad and rolling stock of the party of the second part hereto, including interest payable or to become payable on the mortgage bonds of the Chicago company.

(4) Actual cost of equipment, including moneys due on the locomotives of the Yards herein demised, or of the Chicago company.

(5) Cost of extraordinary improvements or betterments upon the lines of the Railroad, required to be made by State or municipal authority.

(6) All other necessary expenses incurred in operating the lines of the Railroad consistent with the efficient operation of the same, it being the intention hereof that the Yards shall receive as rental hereunder the actual two-thirds of the entire net earnings and revenue of the Railroad to the same extent as if the Yards was the owner of the railway lines of the Railroad and all extensions thereof.

In determining the cost of maintenance and operation of the lines of railroad of the party of the second part hereto and of the amount of the fixed charges thereon all facts and information relative thereto, in addition to what is shown by the books of account and vouchers above provided for, shall always on demand be furnished and supplied freely and fully to the Yards. To that end the Railroad covenants and agrees that it will, during the term herein demised, keep accurate and true accounts of all its receipts and expenditures and upon whatever account the same were received or disbursed by
54 it, all of which shall always be subject to inspection by the Yards, or its nominee.

ARTICLE VII. The Railroad covenants and agrees that if it shall at any time hereafter during the existence of this lease or demise fail or omit to pay the rent herein reserved, or any part of said rent when the same should be paid as herein provided, or shall fail or omit to keep and perform all the covenants and agreements herein contained by it to be kept and performed, or any of them, and shall continue in such default for the period of ninety days, then and in either and every such case, it shall be lawful for the Yards at its option to enter into and upon the premises and appurtenances demised and every part thereof as to which such default exists and remove all persons therefrom without let or hindrance by the Railroad; thenceforth the said demised premises and property and all additions and improvements which shall have been made to the same to have, hold, possess, and enjoy as in the first and former estate of the Yards in the said premises and property, with the right to collect the rentals then due; or may take such other and further action for the enforcement of the provisions of this agreement as to the said Yards may seem advisable, and the Railroad to expel and put out, using such force as may be necessary; but all remedies, whether at

law or in equity, or by this instrument reserved, to be always construed as being cumulative, and no one remedy as a bar upon, or to the exercise of, any other remedy.

ARTICLE. VIII. The Railroad will pay and discharge all claims, demands, rights, suit, or suits, the liability for which shall accrue or become fixed and determined from and after the date of this instrument, and forever hold the Yards harmless from and against the same; and the Yards will pay, discharge, and assume all claims, demands, rights, suit, or suits, the liability for which shall accrue or become fixed and determined prior to the date of this instrument, and forever hold the Railroad harmless from and against the same. This covenant, on behalf of the Railroad, shall extend to, and comprehend, any claim or demand, judgment or decrees, loss or expense, incurred by the Yards because of any law or statute of the State of Illinois making liable the lessor or owner of the track on which the liability may accrue.

ARTICLE. IX. The Railroad will from time to time release to the Yards any of the property or premises by this instrument demised not necessary to the Railroad in the operation of the premises and property by this instrument to it demised.

ARTICLE X. This agreement shall inure to the benefit of and be binding upon the successors, assigns, purchasers, sublessees, and licensees of the parties hereto, and the provisions herein shall always and irrevocably be held to be covenants, running with the land
55 and to bind all persons, firms, and corporations taking the premises herein described, or any part thereof, by, through, or under the parties hereto, or either of them.

In witness whereof the parties hereto have caused these presents to be executed by their respective presidents and their corporate seals to be hereunto attached, attested by their respective secretaries, the action of said presidents severally being thereto duly authorized by the several boards of directors of the parties hereto the day and year first above written.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO.

By N. THAYER, *President.*

[Union Stock Yard & Transit Co., of Chicago.]

Attest:

J. C. DENISON, *Secretary.*

CHICAGO AND INDIANA STATE LINE RAILWAY COMPANY,

By J. A. SPOOR, *President.*

[Chicago & Indiana State Line Railway Co. Seal.]

Attest:

JAMES MILES, *Secretary.*

56 EXHIBIT E.

An agreement made and entered into this —— day of ——, one thousand nine hundred and nine, by and between the Union Stock Yard and Transit Company of Chicago, a corporation of the

State of Illinois, as party of the first part, and Louis Pfaelzer, David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, all of the city of Chicago, State of Illinois, partners under the copartnership name and style of Louis Pfaelzer & Sons, as parties of the second part.

Whereas the Union Stock Yard and Transit Company of Chicago, party of the first part (hereinafter called the "Stockyards Company"), was organized and incorporated in the year 1865 under the laws of the state of Illinois with power to locate, construct, and maintain, at or in proximity to the city of Chicago, yards, inclosures, building, railway lines, etc., for the conduct and accommodation of the business of a general union stock yard for cattle and other live stock, and now has a capital stock issued and outstanding of the par value of thirteen million two hundred thousand dollars ($13,200,000), consisting of one hundred and thirty-two thousand shares of the par value of one hundred dollars ($100) each, and has constructed and for many years maintained in said city of Chicago large and extensive yards, buildings, railway tracks, and plant necessary for the conduct of the business of a general union stock yards for cattle and other live stock, and said stock yards is now and for many years has been the largest live stock market in the world, and the largest number of cattle and other live stock are consigned to and bought, sold, or reshipped at said yards; and

Whereas the property of said Stock Yards Company is of great value and its business produces great revenue, income, and profits, which are principally derived from yardage and charges for or tolls on cattle and other live stock shipped and consigned to said yards and sold and bought there, and from charges for feeding, watering, and caring for such live stock; and

Whereas the numerous slaughtering, packing, and canning plants and establishments have been located and are carrying on business on property in the immediate neighborhood or contiguous to said stock yards, and the proprietors and managers of said plants and establishments have for many years bought and still buy more than

57 ——— per centum of all the cattle and other live stock consigned to and sold at said stock yards, and the location of other and additional slaughtering, packing, and canning plants and establishments on property also adjacent or contiguous to said stock yards will increase the demand and market at said yards and tend to protect, preserve, and increase the business, income, and profits of said Stock Yards Company; and

Whereas it is impracticable for any stock yards in the United States, under modern conditions of carrying on the business, to create and maintain any permanent and stable demand and market for cattle and other live stock, or to furnish, afford, and secure to shippers a continuous demand and market unless by and through the existence and maintenance of extensive slaughtering, packing, and canning plants and establishments in the immediate neighborhood of such stock yards; and

Whereas the parties of the second part, as copartners under the said firm name and style of Louis Pfaelzer & Sons, have been and are now engaged in the business of slaughtering cattle and other live stock on certain leased property situated on ——— ——— in said city of Chicago, and the lease of such premises will expire on the 30th day of April, 1911, and in contemplation and anticipation of the expiration of said lease they propose and intend to erect a new slaughtering, packing, and canning plant and establishment either at Chicago or at Kansas City, Kansas and Missouri, and the party of the first part has solicited and desires to induce said parties of the second part permanently to remain at Chicago and abandon any proposed plan of removing to said Kansas City, and to construct a slaughtering, packing, and canning establishment upon premises adjacent or contiguous to said Chicago stock yards with a daily slaughtering capacity greatly in excess of the present facilities of the parties of the second part:

Now, this agreement witnesseth that the parties hereto, for and in consideration of the premises and of the agreements and covenants hereinafter set forth, have agreed and covenanted, and hereby do agree and covenant, with each other as follows:

First. The party of the first part hereto hereby offers, agrees, and covenants to contribute to the parties of the second part or upon their order the sum of fifty thousand dollars ($50,000) towards the construction of a modern slaughtering, packing, and canning plant at Chicago and adjacent to said stock yards, subject to the terms and conditions and to be paid, used, and applied as hereinafter recited.

Second. The said parties of the second part accept said offer to contribute fifty thousand dollars ($50,000), and in consideration thereof agree and covenant to build, at Chicago, as soon as practicable, upon the lands described below, a modern slaughtering, packing, and canning plant and establishment having a killing capacity per day of at least two hundred and fifty cattle, two hundred
58 and fifty hogs, and one hundred and fifty sheep, such lands being described as follows:

Lots twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32) in the subdivision of block 4 of the superior court partition of the west half of section 4, township 38 north, of range 14 east of the third principal meridian.

The buildings, machinery, and fixtures of said slaughtering and packing plant so to be erected on said premises by the parties of the second part are to cost them not less than one hunderd and twenty-five thousand dollars ($125,000), exclusive of the cost or value of the land or other improvements, and the architect's plans for such plant are to be submitted to and approved in writing, before the commencement of construction, by John A. Spoor, of the city of Chicago, as president of the party of the first part. If said slaughtering, packing, and canning plant be thereupon constructed substantially in accordance with the architect's plans so submitted to

and approved by said Spoor, then and in that event the condition of this agreement as to the killing capacity per day of said plant shall be deemed to have been duly complied with to all intents and purposes.

Third. The said sum of fifty thousand dollars ($50,000) so to be contributed by the party of the first part to the parties of the second part towards such construction shall be paid as follows, viz: One-half thereof, or twenty-five thousand dollars ($25,000), when at least fifty thousand dollars ($50,000) of work shall have been done on buildings, machinery, and fixtures of said plant, to be determined by the certificate or certificates to that effect of the architect employed by the parties of the second part, and the remaining half thereof when fifty thousand dollars ($50,000) of additional work shall have been done on said buildings, machinery, and fixtures, to be likewise determined by said architect's certificate or certificates.

Fourth. The parties of the second part agree and covenant that they and their successor or successors shall, for and during the period of fifteen years from the date of the completion of said plant, conduct a general slaughtering, packing, and canning house business on said premises, and that all cattle and other live stock slaughtered or packed by them in or about said city of Chicago, or within two hundred miles thereof, shall be bought at said Chicago stock yards, but if not bought there, that such cattle and other live stock shall pass through and use said yards and pay the customary yardage, tolls, and charges thereon, or that they will pay or cause to be paid to the party of the first part full tolls and charges thereon, as fully, to all intents and pu'poses, as if such live stock were sent to said stock yard for sale and there bought by the parties of the
59 second part. Said parties of the second part further agree and covenant that during said period the conduct of their said business of slaughtering and packing shall be continuous unless interrupted by strikes, fires, cyclones, or other causes beyond their control, and that, if so interrupted, they will at their own proper cost and expense remove the cause of interruption as soon as practicable by repairing, rebuilding, or other means, so as promptly to resume business as before the interruption.

Fifth. The said parties of the second part hereby further covenant and agree as follows: That for and during said period of fifteen years they will conduct all their slaughtering, packing, and canning business on said premises adjoining the stock yards and any adjacent additions or extensions; that they will not build, erect, or construct any slaughtering, packing, or canning plant or establishment in any other city or State; that they will not organize or cause to be organized or promote the organization of any corporation for the purpose of constructing any slaughtering, packing, or canning plant in any other city or State, or in any other place in the city of Chicago or State of Illinois; that they will not, directly or indirectly, organize or cause to be organized or promote the organization of any stock yards other than said Chicago Stock Yards, and that they will not be or

become interested, directly or indirectly, as stockholders, bondholders, or otherwise, in any slaughtering, packing, or canning company located in the vicinity of any other stock yards than the Chicago Stock Yards or in any company owning or operating yards other than said party of the first part; but nothing herein contained shall be construed as preventing said second parties from organizing a corporation for the purpose of taking over the business now conducted and hereafter to be conducted by them upon the premises hereinabove described of said Louis Pfaelzer & Sons, or any adjacent extensions or additions. In the event said second parties shall cause a corporation to be organized for the purpose of taking over and operating the business now conducted and to be conducted on the premises herein described by said Louis Pfaelzer & Sons, they jointly and severally covenant and agree that said corporation will faithfully maintain and carry out each, every, and all of the agreements made in this contract by said second parties and will duly enter into a contract to that effect for the then unexpired period of said term of years.

Sixth. This contract shall enure to the benefit of and be binding upon not only the parties hereto, but their successors and assigns, and the parties of the second part agree and covenant, jointly and severally, as fully as if each separate agreement and covenant so provided.

Seventh. The parties hereto further agree and covenant that they will do or cause to be done or execute or cause to be executed any and all such further acts, deeds, and instruments as may be necessary for the more effectively carrying out this agreement according to its true intent and purpose, and as may be reasonably advised or required by the parties hereto or their respective counsel.

In witness whereof the parties hereto have caused this agreement to be executed the day and year first above written.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO,

By ——— ———.

LOUIS PFAELZER & SONS.

Attest:

——— ———.

For value received at or before the execution and delivery of the within contract, The Chicago Junction Railways and Union Stock Yards Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, hereby guarantees the faithful performance by the Union Stock Yard and Transit Company of Chicago of each, every, and all of the conditions imposed upon it under and by virtue of the terms of the annexed contract.

In witness whereof the said The Chicago Junction Railways and Union Stock Yards Company has caused this instrument to be exe-

cuted by its president, attested by its secretary, and its corporate seal to be hereunto affixed at Chicago, this —— day of ———, 19—.

THE CHICAGO JUNCTION RAILWAYS AND
UNION STOCK YARDS COMPANY.

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

61 *Chancery subpœna.*

Issued, returned, & filed June 21, 1910.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The United States of America to Union Stock Yard and Transit Company of Chicago, a corporation; the Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, greeting:

We command you and every of you, that you appear before our judges of our Circuit Court of the United States of America for the Northern District of Illinois, at Chicago, in the eastern division of said district, on the first Monday in the month of July next, to answer the bill of complaint of the United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois, to execute:

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this thirteenth day of June, in the year of our Lord one thousand nine hundred and ten and of our independence the 134th year.

JOHN H. R. JAMAR, *Clerk.*

(Seal of the United States Circuit Court, Northern District of Illinois.)

62 *Memorandum.*

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago, aforesaid, on or before the day to which this writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

JOHN H. R. JAMAR, *Clerk.*

(Endorsed): Original. General, No. 30041. Marshal's No. 8815. Circuit Court of the United States, Northern District of Illinois. Chancery subpœna. Returnable to rule day, first Monday in July, A. D. 1910. John H. R. Jamar, clerk.

I served this writ within my district in the following manner, to wit, upon the Union Stock Yard and Transit Company of Chicago, a corporation, by reading and delivering a true copy to A. G. Leonard, vice president of said corporation. I was unable to find the president of said corporation.

This 14th day of June, 1910, at Chicago, Illinois, upon the Chicago Junction Railway Company, a corporation, by serving R. Fitzgerald, vice president of said corporation, and at the same time delivering to him a true copy thereof. I was unable to find the president of said corporation.

This 14th day of June, 1910, at Chicago, Illinois, upon David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer
63 and Sons, and at the same time delivering to each a true copy thereof.

This 14th day of June, 1910, at Chicago, Illinois, I was unable to find The Chicago Junction Railways and Union Stock Yards Company, a corporation, within my district. I return this unexecuted by order of district attorney this 20th day of June, 1910.

LUMAN T. HOY, *U. S. Marshal*,
By E. R. DAVIS, *Dpty.*

5 services,	10.00
6 miles	.36
	$10.36

64 *Appearance of David Pfaelzer et al.*

Filed June 29, 1910.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division.

In the United States Circuit Court.

THE UNITED STATES OF AMERICA
vs.
UNION STOCK YARDS & TRANSIT COMPANY OF CHICAGO et al. } Gen. #30041.

We hereby enter the appearance of David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, copartners doing business under the firm name and style of Louis Pfaelzer & Sons, and of ourselves as their solicitors.

McEWEN, WEISSENBACH, SHRIMSKI & MELOAN.

Chicago, June 29/10.

65 *Appearance of Chicago Junction Railways and Union Stock Yards Company.*

Filed July 1, 1910.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainants,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation: The Chicago Junction Railway Company, a corporation: The Chicago Junction Railways and Union Stock Yards Company, a corporation: and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. | In equity.

We hereby enter the appearance in the above-entitled cause of the Chicago Junction Railways and Union Stock Yards Company, a corporation, and that of ourselves as its solicitors, reserving the usual time within which to plead, answer, or demur.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for defendant the Chicago Junction Railways and Union Stock Yards Company 44 Wall Street, New York City.
WILLIAM D. GUTHRIE,
Of Counsel.

66 *Appearance of Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railway Company.*

Filed July 1, 1910.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainants,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation: The Chicago Junction Railway Company, a corporation: The Chicago Junction Railways and Union Stock Yards Company, a corporation: and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. | In equity.

We hereby enter the appearance in the above-entitled cause of the Union Stock Yard & Transit Company of Chicago, a corporation, and of the Chicago Junction Railway Company, a corporation, and

that of ourselves as their solicitors, hereby reserving the usual time within which to plead, answer, or demur.

WINSTON, PAYNE, STRAWN & SHAW,
Solicitors for defendants Union Stock Yard & Transit Company of Chicago and the Chicago Junction Railway Company.

———— ————,
Of Counsel.

67 *Answer of Union Stock Yard and Transit Company of Chicago.*

Filed July 28, 1910.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainant.
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation: The Chicago Junction Railway Company, a corporation: The Chicago Junction Railways and Union Stock Yards Company, a corporation: and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. | No. 30041.

The answer of Union Stock Yard and Transit Company of Chicago, hereinafter called the "Stock Yard Company," one of the defendants in the above-entitled cause.

This defendant, saving and reserving unto itself any and all manner of benefit of exception to the many errors and inconsistencies in the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as this defendant is advised it is necessary or material for it to make answer unto, answering says:

68 This defendant admits that the bill of complaint in this cause of the United States was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

This defendant admits that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

This defendant admits that it was organized and now exists as averred in Paragraph II of said bill of complaint, and that its principal place of business and principal operating office is in the city of

Chicago, within the northern district of the State of Illinois, and that it now has issued and outstanding 132,000 shares of stock of the par value of $100 each, and bonds and notes of the face value of $500,000.

III.

As to the averments of Paragraph III of said bill of complaint with respect to the organization of the Chicago Junction Railway Company this defendant says that it believes the same to be true, but it has no direct knowledge respecting the same and that it neither admits nor denies the same.

IV.

As to the averments of Paragraph IV of said bill of complaint with respect to the organization of the defendant the Chicago Junction Railways & Union Stock Yards Company, therein called "the
69 Investment Company," this defendant says that it is not advised respecting the same and that it neither admits or denies the same.

V.

This defendant admits each, every and all of the averments contained in Paragraph V of said bill of complaint.

VI.

This defendant admits each, every and all of the averments contained in Paragraph VI of said bill of complaint.

VII.

With respect to the averments in Paragraph VII of said bill of complaint, this defendant avers that the purposes of the organization of this defendant are fully set forth in its charter a copy of which is attached to said bill of complaint and is marked "Exhibit A," and reference is hereby made by this defendant to said "Exhibit A" for the purposes and powers of said defendant, and this defendant denies that it was organized for any purpose whatsoever except that disclosed by said "Exhibit A."

This defendants admits that after the passage of the act of February 13, 1865, it proceeded to purchase and acquire the real estate described in Paragraph VII of said bill of complaint, and also that it proceeded to construct and operate the hotel described in said Paragraph VII, and that it has continuously, from that time up to the present time, and is now operating, the said hotel.

This defendant also admits that it also constructed the
70 railroad tracks described in said Paragraph VII and the loading docks, chutes or platforms described in said Paragraph VII and that said "Exhibit C" attached to the said bill of

complaint correctly sets forth the tracks constructed, owned and acquired by this defendant.

This defendant admits that said tracks intersect or connect with substantially all the tracks of the said interstate carriers by railroad (called Trunk Line Carriers in said bill of complaint and hereinafter also called "Trunk Line Carriers") entering the city of Chicago, and that it is physically possible by means thereof for both live and dead freight coming to the stock yards to move on through bills of lading in an unbroken line of rail carriage from points outside of the State of Illinois to the said stock yards and industries located at the said stock yards, and this defendant admits that both live and dead freight does so move. This defendant admits that there have been located along said tracks private industries and that such industries do ship out freight over the lines of railroad hereinabove referred to destined to points beyond the State of Illinois, and that freight is so moved in an unbroken carriage on the railroad tracks originally constructed by this defendant on through bills of lading. But this defendant alleges that it does not issue said through bills of lading. It alleges that it does not issue any bills of lading; that it does not undertake to carry and does not carry said freight any part of the distance over which it moves. It alleges that it does not operate the tracks over which said freight moves, or any of them, and does not participate in the revenue derived from the carriage of said freight. The method by which the billing is issued and
71 handled upon which said freight moves is hereinafter more specifically set forth.

This defendant admits that live stock which is brought to the Chicago Stock Yards by trunk line carriers is delivered at the loading docks, chutes and platforms and is unloaded by the employes of the Stock Yard Company, and that for this unloading service the Stock Yard Company is paid by the trunk line carriers carrying the freight a specific sum per car for all the cars so unloaded, and this defendant admits that the specific sum so paid to it for such unloading service is not published or filed by it with the Interstate Commerce Commission in any tariff issued by it, or in any tariff in which it has concurred. This defendant avers that it is not advised as to whether or not such unloading charge is published or filed with the Interstate Commerce Commission by any trunk line carrier, but it believes that the averments of the bill of complaint in this behalf are true.

Further answering this defendant avers that ever since the organization of the yards the service of loading and unloading live stock is a service for which it has been paid by the trunk line carriers delivering live stock at the loading docks, chutes and platforms of the Stock Yard Company and that it is a service which it has rendered and does render at the request of the trunk line carriers, and as the result of a contract between it and said trunk line carriers providing for the payment therefor.

This defendant admits that the stock so unloaded as set forth in said bill of complaint is mostly stock consigned on through bills of lading, which has been transported by railroad from points outside of the State of Illinois to the stock yards, or to points on the
72 lines of railroad owned by the Stock Yard Company, but leased, as this defendant avers, to the Junction Company, but this defendant avers that said through bills of lading have been and are issued by the trunk line carriers; that this defendant does not participate in rates of said trunk line carriers or receive a division thereof.

This defendant admits that when live stock is outbound from the stock yards destined to points beyond the State of Illinois, the Stock Yard Company loads said stock through and over its loading docks, chutes and platforms, and that it is paid by the trunk line carriers a fixed sum per car for such services, and it admits that the sum so paid to it by said trunk line carriers for such service is not published or filed with the Interstate Commerce Commission in any tariff of this defendant, or in any tariff in which it has concurred. This defendant further answering says that it is not advised as to whether or not such charge has been published or filed with the Interstate Commerce Commission by any trunk line carrier, but it believes the averments of the bill of complaint in this behalf are true. This defendant further answering says that ever since the organization of the yards the trunk line carriers have paid to the Stock Yard Company a fixed sum for performing such service and that such service has been and is now rendered at the request of the trunk line carriers, and as the result of a contract between it and said trunk line carriers providing for the payment therefor.

This defendant admits that most of the stock loaded at the stock yards from the dealers thereof, moves therefrom on through bills of lading by railroad over the rails of the Stock Yard Company in connection with the trunk line carriers, to points beyond the State
73 of Illinois, but avers that said bills of lading are not issued by this defendant.

This defendant alleges that it does not issue bills of lading of any kind or character whatsoever; that it does not participate in the rates received by trunk line carriers from the transportation of freight; that it does not receive a division of any rates charged by trunk line carriers for the transportation of freight; that it is informed and believes and states the fact to be that no freight is moved over the rails owned by this defendant and leased by it to the Junction Company in the rates for the carriage of which either this defendant or this defendant's lessee (the Junction Company) participates or out of which it or its lessee (the Junction Company) receives any division or percentage. This defendant is informed and believes and so alleges that all bills of lading for freight which passes over the railroad tracks owned by this defendant and leased by it to the Junction Company are issued by trunk line carriers.

and that when such freight is moved over the rails leased by it as aforesaid, with the motive power of the trunk line carriers, that such trunk line carriers pay therefor a trackage charge to the Junction Company.

Further answering, this defendant admits that it is not in itself a dealer in cattle or live stock, but that it keeps and maintains a public market where all kinds of live stock are bought and sold. This defendant admits that as part of its stock yards business it feeds and waters stock in transit over the lines of the trunk line carriers, for which it is paid by the carrier or carriers handling the freight to and from the yards. It admits that its charge for such service is not published or filed by it in any tariff issued by it
74 with the Interstate Commerce Commission or in any tariff in which it has concurred; and it does not know whether such charge is published by any trunk line carrier or filed by any trunk line carrier with the Interstate Commerce Commission, but it believes that the averment of the bill of complaint in this respect is true.

Further this defendant alleges that it has never filed and has not now on file any tariffs of any kind with the Interstate Commerce Commission, and that it has never concurred and does not now concur in any tariffs filed by any other person, firm, or corporation with the Interstate Commerce Commission.

Further answering, this defendant avers that the service of feeding and watering live stock is a service for the feeding and watering of live stock in transit; that it does and always has performed such service for the trunk line carriers at the request of the trunk line carriers, and that it receives and always has received compensation therefor from the trunk line carriers; that it does not know and never has known or dealt with the shipper or consignee in the matter of its said charges.

This defendant avers that it is informed and believes and so alleges that said live stock so fed and watered in transit is brought to its feeding and watering sheds by the trunk line carriers over the rails of the Junction Company, for which, as this defendant believes and alleges, said trunk line carriers pay to the Junction Company a fixed sum per car irrespective of the origin or of the destination of the freight or of the amount of revenue received by the said trunk line carriers for the haul.

Further answering, this defendant admits that it frequently makes repairs to cattle cars as averred in said petition, and it admits
75 that the charges exacted by it therefor are not published or filed with the Interstate Commerce Commission in any tariff on file with said commission. This defendant avers that such charges in connection with the repair or alteration of equipment are charges which the trunk line carriers pay to the Stock Yard Company for services which they, the trunk line carriers, employ the Stock Yard Company to perform.

This defendant admits that it frequently feeds, beds, and waters live stock consigned to consignees at the stock yards, and for such

service makes a charge, for which it is paid by the consignee at the yards. It admits that the charges for such services and material are not filed by it in any tariff with the Interstate Commerce Commission.

This defendant admits that on December 15, 1897, it, pursuant to the powers conferred upon it by its charter, leased all of its said railroad to the State Line Company, as set forth in Paragraph VII of said bill of complaint, and that Exhibit D is a correct copy of said lease, and that under and by virtue of the terms of said lease it did not lease its loading docks, chutes, or platforms, or other loading or unloading facilities appurtenant to the stock yards; and it admits that it retained the control of the said facilities and always has continued and still continues to use the same in the manner and method herein pointed out and not otherwise.

VIII.

This defendant avers that it believes the allegations of said bill of complaint, as contained in Paragraph VIII thereof, with respect to the organization of the State Line Company and its consolidation with the Chicago, Hammond & Western Company, under the
76 name of the Chicago Junction Railway Company, to be true, and admits the same; that it also believes to be true the averments in said Paragraph VIII with respect to the sale by the Chicago Junction Railway Company to the East Chicago Belt Railroad Company and admits the same.

With respect to the averments of subdivision (a), subdivision (b), subdivision (c), subdivision (d), subdivision (e), and subdivision (f) of Paragraph VIII of said bill of complaint this defendant says that it is not advised with respect thereto and that it neither admits or denies the same.

This defendant admits each, every, and all of the averments of the said bill of complaint contained in subdivision (g) and subdivision (h) of Paragraph VIII thereof.

With respect to the averments contained in subdivision (i) and subdivision (j) of said Paragraph VIII of said bill of complaint this defendant says that it is not advised respecting the same and that it neither admits or denies the same.

This defendant admits each, every, and all of the averments contained in subdivision (k) of said Paragraph VIII, and with respect to the averments contained in said subdivision (k) touching the movements of certain freight on through bills of lading this defendant alleges that the said through bills of lading are not issued by it, and this defendant alleges that said through bills of lading are issued and handled in the same manner as the bills of lading hereinabove in this answer referred to and in no other way whatsoever.

With respect to the averments in subdivision (l) in Paragraph VIII of said bill of complaint touching the methods and manner in which the Junction Company handles freight, this defendant says
77 that it is not advised as to whether or not the same method and manner is now adopted by the Junction Company as was

formerly employed by this defendant prior to the time when it leased its line to the State Line Company, and it neither admits or denies the allegations of said subdivision (1) relating thereto.

IX.

Further answering this defendant admits each, every, and all of the averments contained in Paragraph IX of said petition, and with respect thereto alleges that it advances said charges to the trunk line carriers for the accommodation and convenience of its own patrons and customers, being the commission men and consignees buying and selling live stock at the stock yards; that the charges which it makes for loading and unloading live stock are paid separately by the trunk line carriers to it, and have nothing to do with the advances made by this defendant on behalf of said consignees and commission men to the trunk line carriers for freight charges due to such carriers for live stock consigned over the lines of such carriers to consignees thereof doing business at the stock yards. This defendant alleges that all bills of lading issued for the carriage of live stock from the stock yards are issued by the agents of the trunk line carriers to the consignors, and are not issued by the Stock Yard Company, or any of its employees.

X.

Further answering this defendant avers that it is not advised with respect to the publication of the tariffs of the Junction Com-
78 pany and it makes no answer with respect to the averments contained in Paragraph X of said bill of complaint relating thereto.

This defendant admits that the Stock Yard Company is the owner of the fee title to the railroad operated by the Junction Company, and that it owns some of the rolling stock now under the control and operation of the Junction Company under its lease of December 15, 1897, but this defendant denies that it is in fact the owner of a railroad engaged in the transportation of property by railroad from points in the various States and Territories of the United States and in the District of Columbia to points on its line of railroad in the State of Illinois, and denies that it is engaged in the transportation of property from points on its line of railroad in the State of Illinois to points in the various States and Territories and the District of Columbia. It admits that it does not file with the Interstate Commerce Commission any rates, schedules, or tariffs whatsoever, and it avers that it is not its duty to file with the Interstate Commerce Commission any rates, tariffs, or schedules whatsoever. It alleges that it is not engaged in transporting property between points on the road the fee title of which is owned by it and points on the line of any other carrier. It admits that it does not concur in the tariffs of any railroad. It alleges that it is not engaged in the transportation business. Further answering it admits that in a general way it has had

general knowledge of the methods adopted by the Junction Company in handling its business, but it avers it has had such knowledge only as a matter of general information, and not as a matter of right or power of control. It avers that until the investigation by the Interstate Commerce Commission of the methods of doing business
79 at the stock yards, which said investigation it avers was made on or about December, 1908, it did not know whether the Junction Company filed its tariffs with the Interstate Commerce Commission or not, and it alleges that it has no power under the lease from it to the said Junction Company to compel the said Junction Company to conduct its business or operate or use its tracks in any other or different way from that selected by the said Junction Company, or adopt any business methods other or different from those selected by the said Junction Company; that under and by virtue of the terms of the said demise no such power is conferred upon this defendant or reserved to it; and that the said Junction Company is a wholly separate and distinct corporation over which this defendant has no control whatsoever.

XI.

Further answering this defendant admits that the rental to be paid by the Junction Company to the Stock Yard Company is fully set forth in article 4 of said Exhibit D.

XII.

With respect to the averments contained in Paragraph XII of said bill of complaint touching the organization of the Chicago Junction Railways & Union Stock Yards Company, one of the defendants herein, this defendant says that it has no information and it neither admits nor denies the same, but this defendant admits that in the year 1890 said Chicago Junction Railways and Union Stock Yards Company acquired and became the owner of and is now the owner of over ninety (90) per cent of the capital stock of this defendant.

With respect to the averments in said Paragraph XII
80 touching the alleged ownership of said Chicago Junction Railways and Union Stock Yards Company of all of the capital stock of the Junction Company this defendant is not advised, makes no answer, and neither admits nor denies the same.

XIII.

Further answering this defendant admits that David Pfaelzer, Abe Pfaelzer and Jones L. Pfaelzer are engaged in the business of buying, slaughtering, and selling packing house products, under the firm name of Louis Pfaelzer & Son; that their present place of business is located in the city of Chicago, county of Cook and State of Illinois, in what is known as the stock yards district, in the

vicinity of the tracks operated by the Junction Company and the cattle pens of this defendant. That said Louis Pfaelzer & Sons in the prosecution of their business purchase live stock shipped by the owners of cattle and sold at the yards; that they slaughter such live stock so purchased at their said packing house; and that such live stock moves from its points of origin on through bills of lading to the consignees thereof at the stock yards district, but it alleges that said bills of lading are issued and handled, and that said live stock is transported in the method hereinabove pointed out in this answer, and in the answer of the Junction Company, and that it is done in no other way whatsoever. It admits that the packing house products manufactured by said Louis Pfaelzer & Sons are sold to consignees in and around Chicago, Illinois, and in other States, and it admits that such packing house products as are sold by said Louis Pfaelzer & Sons to persons in other States are moved and han-
81 dled in the manner that all freight is moved to and from said stock yards, and to and from the industrial plants located in said stock yards district, as set forth in this answer.

XIV.

This defendant admits that it has entered into that certain contract or agreement which is attached to said bill of complaint and marked Exhibit E, and it admits that said contract or agreement is now in process of performance, and that it will, unless restrained by this court, be carried out. It also admits that the performance of said contract or agreement on its part has been guaranteed by said Chicago Junction Railways and Union Stock Yards Company. Further answering it alleges that there are competitive stock yards established in many cities in the States of the United States, to wit, at Sioux City, Iowa, at Omaha, Nebraska, at Kansas City, Kansas, at St. Louis, Missouri, at East St. Louis, Illinois, at Fort Worth, Texas, and at various places in the State of Oklahoma; that all of said stock yards have built up and established their business in competition with that of this defendant by offering and giving inducements either in the shape of land or money to packing houses or other industries to locate at or near their said yards and that the presence of such industries in the immediate vicinity of stock yards is indispensable in order to insure successful operation and offer a stable and continuous demand and market for live stock.

Further answering this defendant alleges that said contract or agreement was entered into for the express purpose of maintaining the business of this defendant as a stock yards, and of increas-
82 ing the volume of said business and of protecting the business of this defendant in competition with other stock yards companies located in various parts of the United States.

It admits that the execution and performance of said contract will tend to increase the amount of interstate freight coming into and going out of the stock yards and moving over the lines of railroad

owned by this defendant and leased by it to the Junction Company. It believes that it will tend to increase the yardage to be collected by this defendant and that it may tend to increase the earnings of the Junction Company, and that it may thus tend to increase as the result thereof the rentals of this defendant from the use of its tracks, but it avers that all of such effects are merely incidental; and it denies that such payment will constitute a payment of money by the owner of a railroad and a common carrier engaged in the transportation of property between points in the various States to a shipper of property transported between such points in the various States, whereby such shipper has his property transported in interstate commerce by railroad at less rates than are exacted by said common carrier or railroad from other persons moving property of similar character and description between the same points at the same time. It alleges that the payment provided for in said contract has nothing whatsoever to do with the transportation of property and the rates and charges therefor and no connection therewith.

Further answering this defendant denies that the payment of the said money to the said Louis Pfaelzer & Sons will be a rebate and an unlawful discrimination in violation of section 2 of the act to regulate commerce, and it denies that it will constitute a device
83 whereby an undue advantage will be given to and an unlawful discrimination will be practiced in favor of, the said Louis Pfaelzer & Sons by this defendant, and it denies that such payment will constitute a concession, rebate and an unlawful discrimination whereby the property of said Louis Pfaelzer & Sons is by a device transported in interstate commerce over the lines of railroad owned by the Stock Yard Company at a less charge than is exacted from other shippers for the same service, and it denies that such payment will constitute a violation of the act of Congress approved February 19, 1903, and as amended June 29, 1906, commonly known as the "Elkins law"; and it denies that it is subject to the jurisdiction of or is obliged and required to file with *with* the Interstate Commerce Commission reports and monthly statements provided for in section 20 of the act to regulate commerce.

Further answering, this defendant alleges that it claims the right to make like payments to the payments provided for in the Pfaelzer contract, otherwise known as Exhibit E to said bill of complaint, either in money or in property at any time for the purpose of protecting, maintaining and increasing its business and of establishing a new industry at or near the vicinity of the stock yards, or retaining an industry already established at or near said stock yards, in such amounts as in the judgment of the board of directors and officers of this defendant may be necessary to protect or further the interests of this defendant, and it alleges that said payment even if made to customers or patrons of said stock yards for the purpose of increasing the business at said stock yards, will not be in violation of any act of the Congress in such case made and provided.

84 XV.

With respect to the allegation contained in paragraph XV of said bill of complaint to the effect that said Chicago Junction Railways and Union Stock Yards Company controls the Junction Company this defendant has no knowledge and makes no answer, but this defendant admits that said Chicago Junction Railways and Union Stock Yards Company, through its ownership of the stock of this defendant company, may control the election of the directors of this defendant. This defendant denies that if said Investment Company entered into an independent contract with said Louis Pfaelzer & Sons that such contract would be made for and on behalf of this defendant.

XVI.

Further answering, the said defendant denies that the said complainant is entitled to the relief prayed for, or any part thereof as against this defendant, and so having answered said bill of complaint the said defendant prays to be hence dismissed with its costs in this behalf most grievously sustained. And this defendant will ever pray, etc.

UNION STOCK YARD & TRANSIT COMPANY OF CHICAGO,
By WINSTON, PAYNE, STRAWN & SHAW,
Its Solicitors.

RALPH M. SHAW,
Of Counsel.

85 *Answer of the Chicago Junction Railway Company.*

Filed July 28, 1910.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainant,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. No. 30041.

The answer of the Chicago Junction Railway Company, hereinafter called the "Junction Company," one of the defendants in the above-entitled cause.

This defendant, saving and reserving unto itself any and all manner of benefit of exception to the many errors and inconsistencies in

the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as this defendant is advised it is necessary or material for it to make answer unto, answering, says: This defendant admits that the bill of complaint in this cause of the United States was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

86 I.

This defendant admits that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

As to the averments contained in Paragraph II of said bill of complaint with respect to the organization of the Union Stock Yard and Transit Company, hereinafter called the "Stock Yard Company," this defendant says it is not advised respecting the same, and that it neither admits or denies the same.

III.

This defendant admits each, every, and all of the averments contained in Paragraph III of said bill of complaint.

IV.

As to the averments contained in Paragraph IV of said bill of complaint with respect to the organization of the defendant Chicago Junction Railways Company and Union Stock Yard Company, therein called the "Investment Company," this defendant says that it is not advised respecting the same, and that it neither admits or denies the same.

V.

This defendant admits each, every, and all of the averments contained in Paragraph V of said bill of complaint.

87 VI.

This defendant admits each, every, and all of the averments contained in Paragraph VI of said bill of complaint.

VII.

With respect to the averments contained in Paragraph VII of said bill of complaint touching the organization of and the purposes of the organization of the Union Stock Yard Company, this defendant

avers that it is not advised respecting the same, and that it neither admits or denies the same.

With respect to the averments contained in said Paragraph VII, this defendant alleges that the through bills of lading mentioned therein are not issued by this defendant on either inbound or outbound live or dead freight; that said through bills of lading are issued by trunk-line carriers which carry the freight; that, with respect to live stock, the said trunk-line carriers have trackage rights over the lines of this defendant, as will be hereinafter more fully set forth, and that they pay for such trackage rights a fixed and specific sum, which is irrespective of the origin of the freight or of the character of the freight or of the length of the haul.

Touching the lease from the Stock Yard Company to the Chicago & Indiana State Line Railroad Company, this defendant admits that Exhibit D, attached to said bill of complaint, is a correct copy of said lease.

As to the other averments contained in said Paragraph VII of said bill of complaint not hereinbefore answered in this paragraph
88 of this answer, this defendant says that it is not advised respecting the same and that it neither admits or denies the same.

VIII.

This defendant admits the averments of said bill of complaint in Paragraph VIII thereof with respect to the organization of the State Line Company, its consolidation with the Chicago, Hammond & Western Railroad Company under the name of the Chicago Junction Railway Company, and its ownership and operation of the line of railroad from Franklin Park on the northwest to the city of Hammond, Indiana. It also admits the averments of said bill of complaint with respect to the sale by the Junction Company on November 1, 1907, of that portion of its railroad running from Franklin Park on the northwest to Hammond and Whiting, Indiana. It also admits that the Junction Company does not now own or operate any tracks of railroad except those operated by it under the lease aforesaid, which said tracks are shown on said Exhibit C. It admits that all of said tracks and lines now operated by it are shown on said Exhibit C. It also admits that all of said tracks and lines now operated by it are owned by said Stock Yard Company, subject, however, to the terms of said lease. This defendant admits the averments of the said bill of complaint with respect to the location of its said tracks and the mileage thereof, and it also admits that all of said industries so served by it are located at or near the stock yards in the city of Chicago, county of Cook, and State of Illinois.

This defendant admits all of the averments in subdivision (a) in Paragraph VIII of said bill of complaint, and, further answer-
89 ing, it alleges that the several trunk-line carriers therein referred to have trackage rights over the rails of the Junction Company and that the defendant, the Junction Company, is paid by

said trunk-line carriers running their trains over the tracks of the Junction Company for the purpose of connecting eastern and western trunk lines a fixed sum per car for each car moved by said trunk-line carrier over the tracks of the Junction Company, and that it receives this fixed sum regardless of the character of the commodity contained in such cars, or where the same is received, or its point of destination, or the amount of revenue derived by the trunk line from the haul, and has and receives no interest in the through rate charged by any trunk-line carrier.

This defendant admits each, every, and all of the averments of said bill of complaint contained in subdivision (b) of Paragraph VIII thereof, and with respect to these allegations said defendant avers that the carloads of dead freight referred to in said subdivision (b) of Paragraph VIII always move on through bills of lading issued by the trunk-line carriers; that this defendant does not issue or handle these bills of lading and has no negotiations with the consignor or the consignee of such freight. The service performed by it is a switching service. For this service in making the switch from the receiving tracks to other points on these tracks, this defendant receives a fixed switching charge, which is paid to it by the trunk-line carrier, regardless of the character of the commodity in the car, or of its origin, or its destination, or of the amount of the revenue received from the haul by the trunk-line carrier. The trunk-line carrier in each instance absorbs this switching charge made by this defendant.

When this defendant receives the car upon the receiving track
90 from the trunk-line carrier, it gives to the trunk-line carrier a receipt showing that it has received the car. All of the trunk-line carriers have agents in the stock-yards district who attend to the collection of freight charges on inbound freight, except as hereinafter set forth, and to the ordering of cars wanted by shippers for outbound freight, and to the issuance of bills of lading on such shipments, and to such negotiations as may arise between the consignee and the carrier with respect to the surrender of bills of lading for inbound freight or other matters. When a car is received by this defendant at the receiving track and is delivered by this defendant to its destination on its rails, this defendant deals solely with the trunk-line carriers. When cars are delivered for outbound freight by this defendant to shippers in the stock-yards district, the consignors or shippers pay the charges for the entire movement to the trunk-line carriers, or their agents stationed at the yards. This defendant does not negotiate with shippers or consignees respecting either incoming or outgoing freight. This defendant avers that the foregoing facts apply to each, every, and all of the shipments of inbound freight or outbound freight to or from the stock-yards district, or to or from any industries located thereat along the lines of the Junction Company.

Further answering this defendant admits the averments of the bill of complaint contained in subdivision (c) in Paragraph VIII, and with respect to these allegations this defendant company alleges that when any shippers located in the stock-yards district wish cars for

loading outbound either dead or live freight, the car is placed at the loading docks or platform of the shipper by this defendant,
91 not at the request of the shipper but upon an order received by this defendant from a trunk-line carrier. For the service which this defendant performs in moving with its own motive power such cars to the receiving tracks of the trunk-line carrier, the trunk-line carriers pay this defendant a switching charge which the trunk-line carriers absorb in each instance. This defendant issues no bill of lading with respect to this outbound freight, but such billing is issued by the agents of the trunk-line carriers stationed at the yards. Each of the trunk-line carriers have agents located at or near the stock-yards district for this purpose, and such negotiations if any, as take place between the shippers and the carrier occur between the agents of the trunk-line carriers and the shippers. The compensation which this defendant gets for its switching for outbound freight is irrespective of the character of the commodity in the car, or of the destination, or of the length of the haul, or of the revenue derived by the trunk-line carrier therefrom.

This defendant admits each, every, and all of the averments of the said bill of complaint contained in subdivision (d) of Paragraph VIII thereof and with respect to the allegations of said subdivision (d) of Paragraph VIII, this defendant alleges that for the service rendered by it touching the loading and switching of L. C. L. freight at the Union Station, this defendant is paid by the trunk-line carriers five cents per 100 pounds for whatever freight is handled by it at the Union Station. This defendant receives no sum or compensation of any kind from the shipper, and the runk-line carrier absorbs out of its through rate the compensation paid by it to this defendant.

With respect to the averments of subdivision (d) of Paragraph
92 VIII of said bill of complaint respecting prepaid L. C. L. freight handled at the Union Station, this defendant says that when any L. C. L. freight delivered to this defendant at the Union Station is prepaid, the amounts collected thereon are immediately forwarded to the trunk-line carrier which carries the freight. This defendant makes no charge for the collection, but for its service in receiving and loading such freight it is paid by the trunk-line carrier making the haul five cents per 100 pounds on all freight handled by it.

With respect to the averments of said subdivision (d) of Paragraph VIII of said bill of complaint touching the arrangement between this defendant and the Baltimore & Ohio Railroad Company, this defendant says that for the service rendered by it to the Baltimore and Ohio Railroad Company the Baltimore and Ohio Railroad Company pays this defendant at the rate of five cents per 100 pounds for all freight distributed through the Union Station and reloaded by it. This defendant does not know the shipper in the transaction. The service is a service rendered by it at the request of the Baltimore & Ohio Railroad Company.

This defendant admits each, every, and all of the averments of subdivision (e) in Paragraph VIII of said bill of complaint, and

with respect to these averments said defendant shows that all live stock coming to points in the stock-yards district is generally moved by the motive power of the trunk-line carriers upon whose lines the freight originates over the rails of this defendant to the loading docks, chutes, and platforms of the Stock Yard Company; and further answering said defendant shows that for the privilege of running their trains of live stock over the tracks of this defendant
93 with their own motive power, each of the trunk-line carriers so using the said tracks of this defendant for live-stock deliveries at the docks, chutes, or platforms of the Stock Yard Company, pays to this defendant a trackage charge, which is a fixed sum per car upon every car passing over said tracks, and is irrespective of the origin of the freight or of the length of the haul or of the character of the live stock contained in the cars, or of the revenue derived by the trunk-line carrier for making the haul.

This defendant admits each, every, and all of the averments of subdivision (f) of Paragraph VIII, and with respect thereto said defendant shows that for the service rendered by it in switching carloads of horses from the cattle docks, chutes, or platforms of the Stock Yard Company to the chutes provided by the Stock Yard Company for the unloading of horses, the trunk-line carriers pay this defendant a regular switching charge fixed at so much per car for each car moved. This switching charge is in addition to the trackage charge paid by the trunk-line carrier for the use of this defendant's tracks from the points of intersection of the tracks of the trunk-line carriers and this defendant to the loading docks, chutes, or platforms of the Stock Yard Company. This defendant further shows that while it is true that such shipments move into the stock yards on through bills of lading, that said through bills of lading are not handled or issued by this defendant, but are handled and issued as is hereinabove set forth in this answer, and in no other way whatsoever.

Further answering this defendant shows that it does not in any of the instances above set forth make the rate upon which either the carload dead freight, or the L. C. L. freight, or the live stock
94 or the horses move; that it does not issue any bills of lading with respect to either inbound or outbound live or dead freight; that it does not have any transaction with respect either to the rate or to the issuance or surrender of bills of lading or to negotiations respecting said bills of lading, with either the consignors or consignees of such freight, or in connection therewith, or in relation thereto, except as has heretofore been set forth in this answer. The charges of this defendant are in all instances referred to in said bill of complaint paid to this defendant by the trunk-line carriers who undertake to make the through haul. This defendant shows that in all instances this defendant's compensation is paid by the trunk-line carriers, and is a fixed sum per switch per car or per 100 pounds, as the case may be, irrespective of the revenue of the trunk-line carrier, or of the destination or origin of the freight, or of the character of the commodities or live stock transported.

Further answering this defendant says that the Junction Company, pursuant to the orders of trunk-line railroad companies, places empty cars at the loading doc[illegible] of the Stock Yard Company, as set forth in subdivision (g) of Paragraph VIII of said bill of complaint.

With respect to the other allegations in said subdivision (g) touching accrued charges in favor of the Stock Yard Company on certain freight this defendant is not advised and it neither admits nor denies the same.

With respect to the averments of subdivision (h) of Paragraph VIII of said bill of complaint this defendant is not advised and it neither admits or denies the same.

This defendant admits the averments in subdivision (i) of Paragraph VIII thereof, and in subdivision (j) of Paragraph VIII
95 thereof, and in subdivision (k) in Paragraph VIII thereof.

With respect to the averments contained in subdivision (k) touching the movements of said freight on through bills of lading, this defendant avers that the said through bills of lading are issued and handled in the same was as the through bills of lading hereinabove referred to in this answer, and in no other way whatsoever.

Further answering this defendant says that it believes it to be true that the method and manner in which the Junction Company now handles the inbound or outbound freight is the same method as that formerly adopted and performed by the Stock Yard Company prior to the time when it leased its line of railroad to the State Line Company, except as hereinafter set forth. This defendant alleges that at the time of the lease from the Stock Yard Company to the State Line Company, the Union Station was not in existence; that the construction and development of the business at the Union Station is due solely to the efforts of the Junction Company.

IX.

With respect to the averments in Paragraph IX of said bill of complaint, touching the method in which waybills are handled and advances made by the Stock Yard Company, this defendant is not advised and neither admits or denies the same.

This defendant alleges that all bills of lading issued for the carriage of live stock from the stock yards are issued by the agents of the trunk-line carriers to the consignors, and are not issued by the Stock Yard Company, or any of its employes, or by this defendant, or any of its employes. Further this defendant alleges
96 that all charges made by it for L. C. L. freight handled by it at the Union Station are made and bills rendered by the auditor of this defendant to the various railroads forwarding the freight and in due course of business, are paid therefor by such trunk-line carriers.

X.

Further answering this defendant admits that it has published tariffs showing the charges which it exacts and collects for its serv-

ices in the transportation of property as hereinabove set forth, and it avers that such tariffs are nothing more or less than a tabulation of its switching charges. It admits also that said publication also shows charges that it makes for freight handled and transported by it in the method set forth in said petition at the Union Station. Also admits that said tariffs are in general circulation in and about the city of Chicago, and especially in and around the stock yards district, and that said tariffs have not been published and filed with the Interstate Commerce Commission, but this defendant denies that the Junction Company is a common carrier engaged in the transportation of property by railroad from points in the State of Illinois to points in other States of the United States, and to points in the territories of the United States and the District of Columbia, and it denies that it is a common carrier engaged in the transportation of property by railroad from points in other States of the United States and from points in the territories of the United States and the District of Columbia to points in the State of Illinois.

97 This defendant admits that the respective trunk-line carriers engaged in the transportation of property by railroad from points in other States to points on the lines operated by this defendant, which said property when it reaches the lines of this defendant is handled in one or more of the methods hereinbefore set out, now have on file with the Interstate Commerce Commission their respective tariffs which show the charges exacted by said trunk-line railroads for the services performed by them, and which show the charges of this defendant for the services performed by it, as set forth in said bill of complaint. This defendants admits that it does not concur or join in such tariffs and it is in no way a party thereto, but this defendant denies that it is a common carrier engaged in the transportation of property from points in the various States and Territories and the District of Columbia to points on its line and from points on its line to points in the various States and Territories of the United States. This defendant denies that it does not keep open to public inspection its schedules showing all rates and charges for transportation between different points on its own road, but this defendant admits that it does not keep open for public inspection its schedule or any schedule showing rates and charges for transportation between different points on its own road and the road of any other carrier. This defendant avers that it is not engaged in the transportation of property from points on its own road to points on the road of any other carrier, and that it is not engaged in the transportation of property from points in the various States and Territories to points in the State of Illinois, and from points in the State of Illinois to points in the various States and Territories of the United States.

98 This defendant admits that the Stock Yard Company is the owner of the fee title to the railroad operated by the Junction Company, and that it owns some of the rolling stock now under the control and operation of the Junction Company under its lease

of December 15, 1897, but this defendant denies that the Stock Yard Company is in fact the owner of a railroad engaged in the transportation of property by railroad from points in the various States and Territories of the United States and in the District of Columbia to points on its line of railroad in the State of Illinois.

This defendant alleges that it does not know whether or not the Stock Yard Company has at all times had knowledge as to the nature of the business methods adopted by this defendant, and it neither admits or denies the allegation of Paragraph X of said bill of complaint with respect thereto.

With respect to the averments in Paragraph X of said bill of complaint, touching the alleged tariffs of the Stock Yard Company, this defendant avers that it is not advised with respect thereto, and that it neither admits or denies the same.

Further answering this defendant avers that Stock Yard Company has no power under the lease to it from this defendant to compel this defendant to operate or use its tracks in any other or different way from that selected by this defendant, or to operate or to adopt any business methods other or different from that selected by this defendant; that under and by virtue of the terms of the said demise no such power is conferred upon the Stock Yard Company or reserved to it; that this defendant is a wholly separate and distinct corporation over which the defendant, the said Stock Yard Company, has no control whatsoever.

99

XI.

Further answering these defendants admit that the rental to be paid by the Junction Company to the Stock Yard Company is fully set forth in article 4 of said Exhibit D.

XII.

Further answering this defendant makes no answer with respect to the averments of Paragraph XII of said bill of complaint touching the organization of the Chicago Junction Railways and the Union Stock Yards Company, and the number of shares alleged to be owned by it in said Stock Yard Company. The defendant alleges that it is not advised respecting the same, and it neither admits or denies the same. This defendant admits that said Chicago Junction Railways and Union Stock Yards Company owns all of the shares of this defendant company, except directors' shares.

XIII.

Further answering this defendant admits that David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer are engaged in the business of buying, slaughtering, and selling packing house products, under the firm name of Louis Pfaelzer & Sons; that their present place of business is located in the city of Chicago, county of Cook, and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by this defendant and the cattle pens of the Stock Yard Company. It admits that the said Louis Pfaelzer &

Sons in the prosecution of their business purchase live stock
100 shipped by the owners of cattle and sold at the yards, and that they slaughter such live stock so purchased at their said packing house. It admits that such live stock moves from its points of origin on through bills of lading to the consignees thereof at the stock yards district, but it avers that said bills of lading are issued and handled, and that said live stock is transported in the method hereinabove pointed out in this answer, and it denies that it is done in any other way whatsoever. It admits that the packing house products manufactured by said Louis Pfaelzer & Sons are sold to consignees in and around Chicago, Illinois, and in other States, and it admits that such packing house products as are sold by said Louis Pfaelzer & Sons to persons in other States are moved and handled in the manner that all freight is moved to and from said stock yards and to and from the industrial plants located in said stock yards district, as set forth in this answer.

This defendant further denies it is engaged in commerce among the several States, as stated in Paragraph XIII of said bill of complaint, and alleges that it is not its duty to file with the Interstate Commerce Commission the reports and monthly statements provided for in section 20 of the act to regulate commerce, and it avers that it is not within the jurisdiction of the Interstate Commerce Commission in any respect whatsoever, for the reason as it alleges that it is engaged solely in intrastate business.

XIV.

Further answering this defendant avers that it has no knowledge touching the alleged contract said to have been made by the Stock Yard Company with said defendants Pfaelzer & Sons, and said to have been guaranteed by said Chicago Junction Railways and
101 Union Stock Yards Company, and with respect to the averments of the bill of complaint relating thereto this defendant neither admits or denies the same.

With respect to the averment in the said bill of complaint that said contract if carried out would tend to increase the earnings of this defendant, this defendant avers that it has no knowledge as to what would be the possible effect of said contract, and makes no answer in relation to said allegations, and neither admits nor denies the same. This defendant avers that it is not a party to said contract and has no direct interest therein. Further answering this defendant alleges that if the effect of said contract should result in increasing the revenues of this defendant, that such effect would be merely incidental to the payment to be made thereunder by the Stock Yard Company, as set forth in said bill of complaint, and would have nothing whatsoever to do with the tariffs, rates, or charges made or charged by this defendant or by any common carrier to any shipper whatsoever for the transportation of freight.

It alleges that said payment, if made, would have nothing whatsoever to do with the transportation of property, and no direct connection therewith.

XV.

With respect to the allegation contained in Paragraph XV of said bill of complaint to the effect that said Chicago Junction Railways and Union Stock Yards Company controls said Stock Yard Company this defendant has no knowledge and makes no answer, but this defendant admits that said Chicago Junction Railways and Union Stock Yards Company may, through its ownership of
102 the stock of this defendant company, control the election of directors of this defendant.

With respect to the averments in said Paragraph XV that if the said Chicago Junction Railways and Union Stock Yards Company enters into an independent contract with said Louis Pfaelzer & Sons it would be made for and on behalf of said Stock Yard Company, this defendant is not advised and neither admits nor denies the same.

XVI.

Further answering this defendant denies that the complainant is entitled to the relief prayed for or any part thereof against this defendant, and so having answer the said bill of complaint this defendant prays to be hence dismissed with its costs in this behalf most grievously sustained; and this defendant will ever pray.

CHICAGO JUNCTION RAILWAY COMPANY,
By WINSTON, PAYNE, STRAWN & SHAW,
Its Solicitors.

RALPH M. SHAW,
Of Counsel.

103 *The joint and several answer of David Pfaelzer et al.*

Filed September 1, 1910.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainants,
vs.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons, defendants. | No. 30041.

The joint and several answer of David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, defendants in said bill of complaint.

These defendants, saving and reserving unto themselves any and all manner of benefit of exception to the many errors and inconsisten-

cies in the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as these defendants
104 are advised it is necessary or material for them to make answer unto, answering say:

These defendants admit that the bill of complaint in this cause of the United States of America was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

These defendants admit that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

As to the averments contained in Paragraph II of the bill of complaint, in respect to the organization of the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Company"), these defendants say that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

III.

As to the averments contained in Paragraph III of the bill of complaint, with respect to the organization of the Chicago Junction Railway Company (hereinafter called the "Junction Company"), these defendants say that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

105 IV.

As to the averments contained in Paragraph IV of said bill of complaint with respect to the organization of the defendant the Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "Investment Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

V.

As to the averments contained in Paragraph V of said bill of complaint, these defendants admit that they are citizens of the State of Illinois, residing in the city of Chicago, but deny that they constituted a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, with their principal place of business and principal operating office in the city of Chicago, and within

the northern district of the State of Illinois, at the time of the filing of the bill of complaint herein.

VI.

These defendants admit each and every of the averments contained in Paragraph VI of the said bill of complaint.

VII.

With respect to the averments contained in Paragraph VII of said bill of complaint, touching the organization and the
106 purposes of the organization of the Stock Yard Company, and its method of doing business, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

With respect to the lease from the Stock Yard Company to the Chicago & Indiana State Line Railway Company, as referred to and marked "Exhibit D," and attached to said bill of complaint, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

VIII.

With respect to the averments contained in Paragraph VIII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

IX.

With respect to the averments contained in Paragraph IX of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

107 X.

With respect to the averments contained in Paragraph X of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XI.

With respect to the averments contained in Paragraph XI of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XII.

With respect to the averments contained in Paragraph XII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XIII.

Further answering, these defendants admit that David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer were engaged in the business of buying, slaughtering, and selling for general consumption slaughterhouse products, under the name and style of Louis
108 Pfaelzer & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook, and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yard Company, but deny that they bought, slaughtered, or sold for general consumption hogs or the products thereof, excepting in the prosecution of their retail business, and therein only were the products of hogs sold at retail.

These defendants deny that they have entered into a certain contract or agreement with the Stock Yards Company, a copy of which is attached to said bill of complaint and marked "Exhibit E" and made a part thereof, or that said contract is now in process of performance.

These defendants further answering aver and state the fact to be that the co-partnership business heretofore conducted by them was taken over on the 8th day of June, 1910, by a corporation organized under and by virtue of the laws of the State of Illinois, named and styled Louis Pfaelzer & Sons, and that said corporation filed its charter in the office of the recorder of deeds of Cook county, Illinois, as provided under and by virtue of the statutes of the State of Illinois in such case made and provided, on the 13th day of June, A. D. 1910.

With respect to the averments in said bill of complaint, and referring particularly to the contract marked "Exhibit E," that the carrying out of said contract will increase the amount of
109 interstate freight coming in and going out of the yards of the said Stock Yards Company, and over the lines of railroad owned by said Stock Yards Company and operated by said Junction Company, and likewise increase the yardage to be collected by said Stock Yard Company on live stock and its charges for feed; and also increase the earnings of the Junction Company by increasing the amount of property transported by the Junction Company in interstate commerce over the lines of railroad owned

by the Stock Yard Company, and thus increase the rentals of the Stock Yard Company accruing from the earnings derived from the transportation of property in interstate commerce by railroad under said lease to the Junction Company, these defendants are not advised, and neither admit nor deny the same, but demand strict proof thereof.

These defendants further answering say that they are not advised as to whether the Junction Company is engaged in commerce among the several States, as stated in Paragraph XIII of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XIV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XIV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

110

XV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XV of said bill of complaint, and neither admit nor deny the same, but demand strict proof there.

XVI.

Further answering these defendants say that the co-partnership heretofore existing between David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer is no longer engaged in the business set out in Paragraph XIII of said bill of complaint or in any business whatsoever.

XVII.

Further answering, these defendants deny that the complainants are entitled to the relief prayed for, or any part thereof, against them or either of them, and so having answered the said bill of complaint these defendants pray to be hence dismissed with their costs in this behalf most grievously sustained; and these defendants will ever pray, etc.

DAVID PFAELZER.
ABE PFAELZER.
JONAS L. PFAELZER.
By McEWEN, WEISSENBACH, SHEIMSKI & MELOAN.
Their Solicitors.

JOSEPH WEISSENBACH.
Of Counsel.

111 *The amended joint and several answer of David Pfaelzer et al.*

Filed September 22, 1910.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainants, *vs.* UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons, defendants.	No. 30041.

The amended joint and several answer of David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, defendants in said bill of complaint, filed by leave of court first had and obtained.

These defendants, saving and reserving unto themselves any and all manner of benefit of exception to the many errors and inconsistencies in the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as these defendants are advised it is necessary or material for them to make answer unto, answering, say:

These defendants admit that the bill of complaint in this
112 cause of the United States of America was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

These defendants admit that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

As to the averments contained in Paragraph II of the bill of complaint, in respect to the organization of the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

III.

As to the averments contained in Paragraph III of the bill of complaint, with respect to the organization of the Chicago Junction Railway Company (hereinafter called the "Junction Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

IV.

As to the averments contained in Paragraph IV of said bill of complaint, with respect to the organization of the defendant
113 the Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "Investment Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

V.

As to the averments contained in Paragraph V of said bill of complaint, these defendants admit that they are citizens of the State of Illinois, residing in the city of Chicago, but deny that they constituted a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, with their principal place of business and principal operating office in the city of Chicago, and within the northern district of the State of Illinois, at the time of the filing of the bill of complaint herein.

VI.

These defendants admit each and every of the averments contained in Paragraph VI of the said bill of complaint.

VII.

With respect to the averments contained in Paragraph VII of said bill of complaint, touching the organization and the purposes of the organization of the Stock Yard Company, and its method of doing business, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

114 With respect to the lease from the Stock Yard Company to the Chicago & Indiana State Line Railway Company, as referred to and marked "Exhibit D," and attached to said bill of complaint, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

VIII.

With respect to the averments contained in Paragraph VIII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

IX.

With respect to the averments contained in Paragraph IX of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

X.

With respect to the averments contained in Paragraph X of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

115

XI.

With respect to the averments contained in Paragraph XI of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XII.

With respect to the averments contained in Paragraph XII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XIII.

Further answering these defendants admit that David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer were engaged in the business of buying, slaughtering, and selling for general consumption, slaughter house products, under the name and style of Louis Pfaelzer & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook, and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yards Company.

116 These defendants further answering aver and state the fact to be that the copartnership business heretofore conducted by them was taken over on the 8th day of June, 1910, by a corporation organized under and by virtue of the laws of the State of Illinois, named and styled Louis Pfaelzer & Sons, and that said corporation filed its charter in the office of the recorder of deeds of Cook County, Illinois, as provided under and by virtue of the statutes of the State of Illinois in such case made and provided, on the 13th day of June, A. D. 1910.

These defendants further answering admit that they agreed to enter into a certain contract or agreement with the Stock Yards Company, a copy of which contract or agreement is attached to said bill of complaint and marked "Exhibit E" and made a part thereof.

With respect to the averments in said bill of complaint and referring particularly to the contract marked "Exhibit E" and to the effect that the carrying out of the said contract will increase the amount of interstate freight coming in and going out of the yards of the said Stock Yards Company and over the lines of the railroad owned by the Stock Yards Company and operated by the Junction Company, and likewise increase the earnings collected by said Stock Yards Company on live stock and its charges for feed; and also increase the earnings of the Junction Company by increasing the amount of the property transported by the Junction Company in insterstate commerce over the lines of the railroad owned by the Stock Yards Company and thus increasing the rentals of the Stock

117 Yards Company accruing from the earnings derived from the transportation of property in interstate commerce by railroad under said lease to the Junction Company, these defendants are not advised and neither admit nor deny the same, but demand strict proof thereof; and state the fact to be that all of such effects, if true, are merely incidental; and further say that the payment of moneys provided for in said agreement or contract has nothing whatever to do, nor was it, or is it intended to have anything to do with the transportation of property and the rates and charges therefor, and has no connection therewith whatsoever.

These defendants further answering say that they deny that the payment of the said money to them, or either of them, or to the said corporation, Louis Pfaelzer & Sons, will be a rebate and an unlawful discrimination and violation of the act to regulate commerce and deny that it will constitute a device whereby an undue advantage will be given to and an unlawful discrimination practiced in favor of them, or either of them, by the said Stock Yards Company; and further deny that such payment will constitute a concession, rebate, or drawback and an unlawful discrimination whereby the property of them, or either of them, or of said Louis Pfaelzer & Sons, the corporation, is by a device transported as interstate commerce over the lines of railroad owned by the Stock Yards Company at a less charge than is charged to other shippers for the same service; and

these defendants deny that such payment will constitute a violation of the act of Congress approved February 19th, 1903, and as amended June 29th, 1906, commonly known as the "Elkins law."

118 These defendants further answering say that at no time during the negotiations conducted between them, or either of them, and the said Stock Yards Company, subsequent to the proposition of such Stock Yards Company to pay to them the amount agreed upon and set out in said contract, was anything said to them, or either of them, with reference to the transportation of property of any kind or the charges to be exacted by said company from these defendants by any of the officers or agents of said Stock Yards Company, or anyone acting for it; nor is there any agreement or understanding expressed or implied on the subject whatsoever.

These defendants further answering say that prior to and until the 21st day of January, 1910, they were copartners with Louis Pfaelzer, and were engaged in the business of buying, slaughtering, and selling for general consumption, slaughter house products, under the name and style of Louis Pfaelzer & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook, and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yards Company, and that while so engaged in business certain inspectors and investigators representing the Bureau of Animal Industry, a department of the United States Department of Agriculture (hereinafter referred to as "Agricultural Department"), in the course of the prosecution of their duties as such, visited and inspected the packing plant then operated by the said Louis Pfaelzer & Sons at a time early in

119 the year 1907, and that after such inspection said Louis Pfaelzer & Sons received a notice in writing from the said Agricultural Department under date of March 30th, 1907, directing them (the said Louis Pfaelzer & Sons) to make certain changes, replacements, and improvements, the making of which changes, replacements, and improvements necessitated the expenditure of large sums of money.

These defendants further answering say that the said Louis Pfaelzer & Sons endeavored to and did comply with said notice in writing, under said date, and that thereafter, to wit, on the 22nd day of October, 1908, they received a further notice in writing from the said Agricultural Department, in substance, to the effect that they, the said Louis Pfaelzer & Sons, were directed to take immediate steps to provide a new establishment for their business, which would meet with the requirements of the regulations of the said Agricultural Department, and that upon receipt of said notice said Louis Pfaelzer & Sons endeavored to secure a suitable site for the erection of an establishment which would meet with the requirements of the regulations of the said Agricultural Department; that to comply with the said direction of the said Agricultural Department it would

become necessary to destroy the entire plant then occupied by the said Louis Pfaelzer & Sons, which would thereby cause the said Louis Pfaelzer & Sons to sustain great loss; that shortly after the receipt of said notice and on, to wit, the 8th day of January, 1909, said Louis Pfaelzer & Sons received a further notice in writing
120 from the Honorable James Wilson, Secretary of the Department of Agriculture of the United States, to the effect that on and after the 10th day of April, 1909, Government inspection of the products of said Louis Pfaelzer & Sons would be denied to said Louis Pfaelzer & Sons.

These defendants further answering say that the carrying into effect of such order of the said Secretary of the United States Department of Agriculture would mean, in effect, the total destruction of their entire business; that thereupon the said Louis Pfaelzer & Sons called upon the officers of the Stock Yards Company for financial assistance in the matter of the erection of a new and modern packing plant, and that the said Stock Yards Company refused to the said Louis Pfaelzer & Sons the financial assistance so sought; that said Louis Pfaelzer & Sons, in order to protect the business already established by them in the city of Chicago and in the various States of the United States of America, took steps to secure a site for the erection of a new packing plant in the city of Kansas City, Missouri, they being unable to secure a proper and suitable site for the erection of such plant in the city of Chicago in said Stock Yards district without paying therefor so large a sum of money as to make it doubtful as a matter of business expediency to expend; that shortly thereafter the Stock Yards Company, by its officers and agents, being informed of the proposed removal of the packing plant of said Louis Pfaelzer & Sons to Kansas City, Missouri, negotiations between these defendants and said Stock Yards Company were resumed and as a result thereof said Stock Yards Company agreed with the said Louis Pfaelzer & Sons that if they would re-
121 main within the district known as the Stock Yards district and erect a packing plant contiguous to and in the vicinity of the cattle pens of the Stock Yards Company they, the said Stock Yards Company, would contribute towards the erection of such packing plant the sum of $50,000 in cash; that relying upon the good faith of this arrangement the said Louis Pfaelzer & Sons abandoned their plans for the erection of a new packing plant in Kansas City, Missouri, and proceeded to and did purchase a large amount of real estate in the said Stock Yards district, paying therefor the sum of twenty-nine thousand seven hundred and fifty-five ($29,755) dollars; that said Louis Pfaelzer & Sons employed the services of competent engineers and architects to prepare plans for the proposed buildings, which said plans have been prepared and have been submitted to and revised and accepted by the said Agricultural Department.

These defendants further answering say that they are the sole stockholders and sole directors of the corporation named and styled

Louis Pfaelzer & Sons, which said corporation is the successor to the co-partnership heretofore existing between these defendants, and that David Pfaelzer, Abe Pfaelzer and Jonas L. Pfaelzer are the president, vice president, and secretary-treasurer, respectively, of said corporation; that these defendants relying upon the good faith of the said Stock Yards Company to carry into effect the provisions of the said contract, entered into another certain contract with the Ralph and Sumner Sollitt Company, general contractor, for
122 the erection of the buildings to compose the packing plant, in accordance with the plans and specifications hereinbefore referred to, and agreed to pay under said contract to said Ralph and Sumner Sollitt Company, for the erection and construction of said packing plant, two hundred and twenty thousand ($220,000) dollars; that said building is in course of erection and nearing completion and that said corporation has caused to be issued its certain bonds in the total sum of one hundred and twenty-five thousand ($125,000) dollars, the payment of which bonds is secured by a trust deed to A. S. Peabody, trustee, covering the property of the said corporation, and that these defendants, as individuals, relying upon the good faith of the said Stock Yards Company and its purpose to carry out the agreement set up in said contract marked "Exhibit E" guaranteed the payment of said bonds so issued at the various maturities thereof.

These defendants further answering say that the entering into said contract by them, or either of them, or by the said corporation, Louis Pfaelzer & Sons, is not a violation of any act of Congress in such case made and provided.

These defendants aver that the said corporation, Louis Pfaelzer & Sons, is the successor of the partnership formerly conducted by these defendants under and by virtue of the arrangement provided for in said Exhibit E, and these defendants admit that unless restrained by the order of this honorable court they will cause said corporation to execute said contract known as "Exhibit E" and to carry out the terms and provisions thereof, for and on behalf of these defendants.

123 XIV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XIV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XVI.

Further answering, these defendants say that the co-partnership heretofore existing between David Pfaelzer, Abe Pfaelzer and Jonas L. Pfaelzer is no longer engaged in the business set out in Paragraph XIII of said bill of complaint or in any business whatsoever.

XVII.

Further answering, these defendants ney that the complainants are entitled to the relief prayed for, or any part thereof, against them or either of them, and so having answered the said bill of complaint, these defendants pray to be hence dismissed with their costs in this behalf most grievously sustained. And these defendants will ever pray, etc.

DAVID PFAELZER,
ABE PFAELZER,
JONAS L. PFAELZER,
By McEWEN, WEISSENBACH, SHRIMSKI & MELOAN,
Their Solicitors.

JOSEPH WEISSENBACH,
Of Counsel.

124 *Answer of defendant, the Chicago Junction Railways and Union Stock Yards Company.*

Filed October 22, 1910.

Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, complainant, *vs.* UNION STOCK YARD AND TRANSIT COMPANY of Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants.	No. 30041. In equity.

The answer of the Chicago Junction Railways and Union Stock Yards Company (called in the bill of complaint filed herein, the "Investment Company"), one of the defendants in the above-entitled cause.

125 This defendant, saving and reserving unto itself any and all manner of benefit of exception to the many errors and inconsistencies in the bill of complaint of the said complainant manifest, for answer thereunto, or unto so much thereof as this defendant is advised it is necessary or material for it to make answer unto, answering, says:

This defendant admits that the bill of complaint in this cause of the United States was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

This defendant admits that the Interstate Commerce Commission was created and established and that it now exists as averred in Paragraph II of the bill of complaint.

II.

This defendant admits each and all of the averments contained in Paragraphs III, III, IV, V, and VI of the bill of complaint.

III.

With respect to the averments contained in Paragraph VII of the bill of complaint, touching the purpose of the organization of the Union Stock Yard and Transit Company of Chicago, herein called the "Stock Yard Company," this defendant avers that it has no knowledge respecting the purposes of the organization of such company except as the same are set forth in its charter, a copy of which is attached to the bill of complaint and is marked "Exhibit A."

126 This defendant denies that said company was organized for any purpose whatsoever except that disclosed in and by said "Exhibit A."

With respect to the averments contained in Paragraph VII of the bill of complaint, as to the acquisition of real estate by said Stock Yard Company, the development of its business, the alleged construction of its tracks, loading docks, chutes and platforms, the alleged connections said to have been made by it with so-called "trunk-line carriers," the method by which it is alleged in said Paragraph VII that live and dead freight is moved to and from said Chicago Stock Yards, the services alleged in said Paragraph VII to be performed by the employees of said Stock Yard Company, the manner of loading and unloading freight, the filing of tariffs with the Interstate Commerce Commission, the details of the actual business operations of said company and the charges made therefor, the origin and destination of freight moving to and from said Chicago Stock Yards, the services rendered by said company with respect to the feeding and watering of live stock and the charges exacted therefor and as to whether or not schedules or tariffs of said charges are filed with the

Interstate Commerce Commission, this defendant avers that it has no information or knowledge respecting any of said averments, and that it therefore neither admits nor denies the same, but says that it believes to be true the averments with respect thereto in the answer of the defendant the Stock Yard Company, filed in this cause.

This defendant admits the averments in Paragraph VII of said bill of complaint with respect to the lease made by the Stock Yard Company to a certain other corporation known as the Chicago and Indiana State Line Company, but as to whether or not under
127 the terms of said lease said defendant Stock Yard Company leased or turned over its loading docks, chutes, and platforms and other loading and unloading facilities, only retaining the use thereof, this defendant avers that it has no knowledge, and that it therefore neither admits nor denies said allegations, but says that it believes the answers of the defendants Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railway Company, herein respectively called the "Stock Yard Company" and the "Junction Company," are true in that respect.

IV.

This defendant admits each and all of the averments contained in Paragraph VIII of the bill of complaint with respect to the organization of the Chicago and Indiana State Line Company and its consolidation with a certain other corporation known as the Chicago, Hammond and Western Railroad Company under the name of the Chicago Junction Railway Company. It also admits that said Junction Company on November 1, 1907, sold to the East Chicago Belt Company all that part of its railroad from Franklin Park, Illinois, to Hammond and Whiting, Indiana, and that the said Junction Company does not now own or operate any tracks except those operated by it under the lease from the defendant Stock Yard Company, to the Chicago and Indiana State Line Company, and this defendant admits that all such tracks are wholly located within the county of Cook and State of Illinois.

With respect to the averments contained in said Paragraph VIII, touching the present mileage of said defendant Junction Com-
128 pany and the number of industries served by it, this defendant says that it has no knowledge but that it believes the same to be true.

With respect to each and all of the averments contained in subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of Paragraph VIII of the bill of complaint this defendant says that it has no knowledge, and that it therefore neither admits nor denies the same.

V.

With respect to each and all of the averments contained in Paragraph IX of the bill of complaint, as to the details of the bookkeep-

ing and business operations of the defendant Stock Yard Company, this defendant says it has no knowledge, and that it therefore neither admits nor denies the same.

VI.

With respect to each and all of the averments contained in Paragraph X of the bill of complaint as to the details of the business operations of the Junction Company and its method of doing business and its alleged failure to file certain of its tariffs and its duty so to do, this defendant says that it has no knowledge, and that it therefore neither admits nor denies the same.

VII.

With respect to the averments contained in Paragraph XI of the bill of complaint this defendant admits and avers that the rental to be paid by the Junction Company to the Stock Yard Company is fully set forth in Article IV of "Exhibit D" annexed to the bill of complaint.

129 VIII.

This defendant admits that it was organized in July, 1890, as an investment company for the purpose, among other things, of acquiring and holding shares of the capital stock of the Union Stock Yard and Transit Company of Chicago. It admits that "Exhibit B" to said bill of complaint is a copy of its charter. It avers that under and by virtue of the terms of its charter it was also organized for the purpose of investing in and purchasing and holding the securities of other persons and corporations. It admits that after its organization it became the owner of, and is now the owner of, over ninety per cent of the shares of the capital stock of said Stock Yard Company, and that after the organization of the defendant, the Junction Company, it acquired all of the shares of stock of said company, except the shares held and owned by its directors as qualifying shares. This defendant further admits that the greater part of its income is derived from dividends paid to it upon the shares of stock owned by it in said Stock Yard Company and in said Junction Company, but it avers that it has substantial investments in other enterprises from which it receives an annual income. It also avers that there are now outstanding, in the names of third persons, a number of shares of said Stock Yard Company, over which shares this defendant has no control and in which it has no financial or other interest. It further avers that it does not own the property of either the Stock Yard Company or the Junction Company, and that it has no legal interest in the property of either of said two companies and does not manage or control the same, but that said two companies are separate and distinct corporations from this defendant.

130 IX.

This defendant admits the averments contained in Paragraph XIII of the bill of complaint with respect to the organization of the firm of Louis Pfaelzer & Sons, and the location and character of its business.

This defendant also admits that it has agreed to guarantee a certain contract between the defendant Stock Yard Company and Louis Pfaelzer & Sons, a copy of which is attached to the bill of complaint as Exhibit E.

This defendant avers that said Louis Pfaelzer & Sons, while engaged at or near the Stock Yards district in Chicago in the business of slaughtering live stock and of preparing and selling products thereof, were duly ordered in the year 1907 by certain officials of the United States, representing the Department of Agriculture, to make changes in their plant, and that later, to wit, in January, 1909, said Louis Pfaelzer & Sons, because of the fact that the changes previously ordered had not been made, were duly notified by the Department of Agriculture that on and after the 10th day of April, 1909, the United States Government inspectors would refuse to further inspect the product of the plant of the said Louis Pfaelzer & Sons; that in order to comply with said order of the commission it would have been necessary for said Louis Pfaelzer & Sons to destroy their said packing plant and erect a new one; that thereupon the said Louis Pfaelzer & Sons proposed to move their said business from Chicago to Kansas City; that at Kansas City there is another live stock market and stock-yards company in active competition with the stock yards of the Union Stock Yard and Transit Company of Chicago;
131 that the removal of the business of said Louis Pfaelzer & Sons from the market at the yards of the Union Stock Yard and Transit Company of Chicago to the Kansas City market would have been a direct loss of custom to said Union Stock Yard and Transit Company; and that as a result of negotiations between this defendant and the said Louis Pfaelzer & Sons, and for the purpose of protecting its investment by retaining the business of Louis Pfaelzer & Sons at or near the Chicago Stock Yards, this defendant agreed to guarantee the faithful performance by the Union Stock Yard and Transit Company of Chicago of the contract attached to the bill of complaint and marked "Exhibit E."

With respect to the averments contained in Paragraph XIII of the bill of complaint, as to the method by which the freight consigned to or from said Louis Pfaelzer & Sons is moved in and out of the Stock Yards district at Chicago, this defendant says that it has no knowledge and that it, therefore, neither admits nor denies the same. But this defendant denies that the payment by it of said sum of money or guaranty mentioned in said contract would constitute a payment of money by an owner of a railroad and a common carrier engaged in the transportation of property by railroad between points in the va-

rious States of the United States to a shipper of property transported between points in the various States of the United States over a line of railroad, whereby such shipper would have his property transported in interstate commerce by railroad at less rates than are exacted by a common carrier from other persons moving property of the same character and description between the same points at the same time.

132 This defendant further answering denies that it is subject to the jurisdiction of the Interstate Commerce Commission and denies that said guaranty would be or constitute a violation of section 2 of the act to regulate commerce, and denies that such payment, if made by this defendant, would constitute a device whereby an undue advantage would be given to and an unlawful discrimination would be practiced in favor of said Louis Pfaelzer & Sons, as averred in Paragraph XIII of the bill of complaint, or otherwise, and denies that such payment, if made by this defendant, would constitute a concession, rebate, or unlawful discrimination whereby the property of said Louis Pfaelzer & Sons would be by any device transported in interstate commerce over a line of railroad at less charges than are exacted from other shippers for the same services or at less than the published tariff charges therefor.

X.

Further answering this defendant denies that if it should make good the proposed guaranty in said Exhibit E, such act would be done for the Union Stock Yard and Transit Company. This defendant avers that if said guaranty is made good by this defendant, it will be done by this defendant for the sole purpose of protecting and conserving its investment and what this defendant believes to be its business interests.

And this defendant avers that if this defendant should at any time hereafter make any payments under said guaranty, they would be entirely separate and distinct from any published tariffs of any railroad company, and have no connection directly or indirectly therewith, and would have nothing whatsoever to do directly

133 or indirectly with the charges made for transportation, or the payments due from a shipper to a carrier therefor.

XI.

Further answering this defendant avers that the business of the Stock Yard Company in the conduct of a live-stock market at Chicago is dependent upon the permanent and stable demand and market created by the presence of numerous slaughtering, packing and canning establishments situated in the immediate vicinity of the premises of the yards and kept in operation during the whole year, whose owners and managers constitute the majority in amount of the buyers at such market and purchase over seventy per cent

of the live stock shipped there: that such permanent and stable demand by such establishments is the principal inducing cause for shipments of live stock for sale at said yards: that it would be impracticable to maintain or establish large stock yards at Chicago without at the same time having in the direct vicinity of such yards slaghtering, packing, and canning establishments in continuous operation, so as to furnish a continuous demand and market for any cattle and other live stock that might be shipped there for sale: that large stock yards could not be profitably conducted at Chicago without this permanent, constant, and stable demand so afforded by the presence in continuous operation of adjacent slaughtering, packing, and canning establishments, and that the removal of the establishments now situated in the immediate vicinity of the yards of said Stock Yard Company would greatly diminish the demand and market for live stock at said yards and reduce the number of buyers at said yards and correspondingly diminish and reduce the
134 shipments of live stock to said yards and the gross and net income of said Stock Yard Company.

XII.

Further answering this defendant avers that during the years 1907, 1908, and 1909 there were received at the yards of the Stock Yard Company more than 45,000,000 head of live stock, exclusive of horses, or an average of over 15,000,000 head of live stock per annum, and that of such number there were purchased by slaughtering, packing, and canning establishments in the immediate vicinity of such Chicago Stock Yards approximately seventy per cent.

This defendant further avers that the charges of said Stock Yard Company are paid by the shippers of live stock and not by the purchasers at the yards, and that of the total yardage charges collected by it fully 95 per cent has always been paid by the producers and shippers of live stock and not by the buyers at said yards or by persons owning or interested in slaughtering, canning or packing establishments.

XIII.

This defendant further answering alleges that for more than twenty-five years last past the Chicago Stock Yards have been competing for business with other yards established in other cities and States, and that the principal of said yards have been or are located at Kansas City in the States of Kansas and Missouri: Indianapolis in the State of Indiana: Omaha in the State of Nebraska: St. Joseph in the State of Missouri: East St. Louis in the State of Illinois: Milwaukee in the State of Wisconsin: Sioux City in the State
135 of Iowa: Fort Worth in the State of Texas, and Oklahoma in the State of Oklahoma: and that the several corporations owning and operating said stock yards and competing with the Chicago yards and Stock Yard Company have during all said period

been aiding and subsidizing slaughtering, canning, and packing establishments, in order to induce their location or operation upon premises directly adjoining their several stock yards; that such practice of so inducing and subsidizing the location of slaughtering, packing, and canning establishments began with the St. Louis Stock Yards in 1876, and has continued to be the practice of said yards until the present time; that the most recent instances have been by the Fort Worth and Oklahoma Stock Yards Companies during the present year, 1910; that all of said stock yards maintain markets or yards for the sale of live stock in competition with the yards of the Stock Yard Company, and that they and some of the communities in which they are located are constantly endeavoring to secure the location of slaughtering, canning, and packing establishments in their immediate vicinity in order more efficiently to compete with the Chicago Stock Yard Company.

This defendant further avers that in order to meet the inducements offered by the competitors of said Chicago Stock Yard Company, and to prevent the removal of the live-stock market from Chicago to other points, it has heretofore been deemed necessary by this defendant as the party most interested in the Chicago yards to offer inducements and to grant subsidies so as to secure the maintenance and continuance of existing slaughtering, canning, and packing establishments at the Chicago yards, and the location of new slaughtering, canning, and packing establishments, and the extension and
136 increase of the facilities of those already located there; and that to this end, beginning in the year 1891 and continuing to the present time, it has been the policy of this defendant to grant, and it has granted, large inducements and subsidies to such existing establishments, and that heretofore, beginning in 1891, this defendant made and entered into numerous agreements providing for such grants or subsidies, in consideration of covenants on the part of owners of slaughtering, canning, and packing establishments to continue their businesses in the vicinity of the Chicago yards and to purchase their live stock at such yards or to establish new packing plants in such vicinity and make purchases at said yards.

This defendant further avers that solely for the purposes above alleged it has heretofore entered in good faith into numerous contracts providing for subsidies or inducements to the owners of slaughtering, canning, and packing plants; that it has expended for that purpose under said contracts the sum of about $1,000,000 since July, 1891; that most of such contracts are still in force and effect; that by virtue thereof this defendant has heretofore prevented the removal of many plants located in the vicinity of the Chicago yards, and has induced the increase of facilities and buying capacity of existing plants, and has promoted and secured the location of other plants and thereby increased and protected the live-stock market at Chicago and greatly added to the income and revenue of the Stock Yard Company and the Junction Company, and that its guaranty of "Ex-

hibit E" to the bill of complaint was in pursuance of such policy of maintaining the market at Chicago, and not otherwise.

Wherefore this defendant submits to this honorable
137 court that the complainant, the United States of America, is not entitled to the relief prayed for or any part thereof as against this defendant, and having answered such bill of complaint this defendant prays to be hence dismissed with its costs in this behalf most grievously sustained.

And as in duty bound this defendant will ever pray, &c.

THE CHICAGO JUNCTION RAILWAYS AND
UNION STOCK YARDS COMPANY.
By GUTHRIE, BANGS & VAN SINDEREN,
Its Solicitors,
No. 44 Wall Street, New York.

WILLIAM D. GUTHRIE,
Of Counsel.

138 *Certificate of Attorney General.*

Filed November 16, 1910.

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commission, complainants.

vs.

UNION STOCK YARD COMPANY OF CHICAGO, A CORPORATION, and others, defendants.

To the clerk of said court:

I hereby certify that the above-entitled cause, now pending in said court, is a suit in equity brought by the United States against the Union Stock Yard and Transit Company of Chicago and others, and that said suit is, in my opinion, a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,'" approved February 11, 1903, and complying with the provisions of the act to regulate commerce of February 4, 1887, as amended by the act of June 29, 1906, and more particularly of section 16 of said act, you will file this certificate among the records of the above entitled court, and immediately furnish a copy thereof to each of the circuit judges of the Seventh Circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest prac-

ticable date, before not less than three of the circuit judges of said circuit, as provided by the said act of February 11, 1903.

WM. S. KENYON,
Acting Attorney General.

WASHINGTON, D. C., *November 14, 1910.*

139 *Order transferring cause to United States Commerce Court.*

Entered February 25, 1911.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

SATURDAY, FEBRUARY 25TH, 1911.

Present: Honorable Christian C. Kohlsaat, circuit judge.

THE UNITED STATES OF AMERICA *vs.* UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons.	Chancery. 30911.

It is ordered by the court that the clerk of this court transmit to and file in the United States Commerce Court the originals of all papers filed in this case, and a certified transcript of all record entries up to and including this date, in compliance with section 6 of an act to create a Commerce Court and to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes, approved June 18th, 1910.

140 *Order granting David Pfaelzer et al. leave to file an amended answer.*

Entered April 18, 1911.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON APPLICATION OF THE Attorney General, at request of Interstate Commerce Commission, petitioner. *v.* UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO et al., respondents.	No. 15.

On motion of respondents David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, doing business under the firm name of Louis Pfaelzer

and Sons, by McEwen, Weissenbach, Shrimski, and Meloan, their solicitors, in open court made, for leave to file an amended answer, it is ordered that leave be, and the same is hereby, given to the said respondents to file an amended answer within fifteen days from this date provided the same when filed does not result in delaying the hearing of said cause on the date on which the same is now set.

MARTIN A. KNAPP,
Presiding Judge.

141 *The second amendment of David M. Pfaelzer et al.*

Filed May 1, 1911.

In the Commerce Court of the United States.

UNITED STATES OF AMERICA, UPON THE PETITION OF THE Attorney General, at the request of the Interstate Commerce Commission,
vs.
UNION STOCK YARDS AND TRANSIT COMPANY ET AL., respondents. } No. 15.

The second amendment of David M. Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, respondents, impleaded, etc., to the petition of complainant, by leave of court first had and obtained.

Amend paragraph thirteen of the answer of said respondents, as heretofore firstly amended, by adding thereto the following:

That at and long prior to the time of the making of said contract for the payment of $50,000, there were stock yards located in various cities of the West and Southwest, namely, at Chicago, Illinois; Milwaukee, Wisconsin; Sioux City, Iowa; Omaha, Nebraska; St.
142 Joseph, Missouri; Kansas City, Missouri; St. Louis, Missouri; East St. Louis, Illinois; Fort Worth, Texas; Dallas, Texas; St. Paul, Minnesota; Denver, Colorado; Oklahoma City, Oklahoma, at which were located large packing and slaughtering plants, which consumed live stock and furnished a market for the same.

That it has been customary with all of the respective owners of such stock yards, for the purpose of building up and retaining a market, to assist persons and corporations by way of donations, land, or money, or both, to locate packing and slaughtering and other plants, which not only benefited such stock yard owners, but also was of great value to the stock raisers of the contiguous district and equalized the handling of stock throughout the country, by furnishing various convenient places of slaughter and preparation for the market.

That, as an illustration of the extent to which this custom is followed, these respondents aver that within the past year the owners of

the yards at Oklahoma City paid to a large packer the sum of $750,000 to locate a slaughter house at such yards.

As a further illustration respondents aver that several years ago the said Stock Yards Company at Chicago gave to a packer land for a plant and $500,000 in cash. That this practice and custom has existed for many years and is the result of competition between and among the several cities having stock yard industries.

That these respondents aver, on information and belief, at the time when it became necessary for these respondents to build a new plant or cease business, they could have obtained from the
143 owners of the stock yards at Kansas City $200,000 to locate at that place.

That the slaughtering business at Chicago is conducted by about twelve persons and corporations, of which six do about 95%, and of the remaining 5%, these respondents do about 1% of the total business.

That some one or more of the so-called "big six" doing 95% of the business as aforesaid have plants at all of the places above named and by reason of their size and facilities and diverse locations, are able to exercise a great control of the market in all places, and but for the competition of the smaller packers, like these respondents, would exercise an almost absolute control over prices, and a substantial monopoly.

That these respondents do not, nor does their successor, pay any freight to railroads whatever, except that in certain months of each year, they are usually unable to get a high enough grade of beef for their trade, in Chicago, and therefore buy in the Kansas City market in those months cattle by the carload, which they ship to Chicago and kill at their said plant, and occasionally purchase a few hogs, and sometimes lambs in the Louisville, Ky., market; that the freight paid for this service in the five years last past was for cattle $10,911.61, for lambs $3,099.05, for hogs $169.34, making a total of $14,180, or a yearly average of $2,836 paid to the Chicago Junction Railway. That otherwise respondents substantially pay no freight.

That all coal, salt, and supplies are furnished at a lump
144 price by weight f. o. b. cars at the plant, and any freight paid therefor is by respondents as agents of the seller and deducted from the lump sale price on settlement.

That in the past almost the entire product of the plant, excepting by-products, has been sold to the local city trade, and not handled by rail; that the freight on whatever shipments are made is paid by the consignee and not for or by these respondents or their successor.

That the establishing of the plant of these respondents at the yards takes up about 120 feet of side track and there is much other property available for other plants on the side tracks and switches of the said Stock Yards Company.

That said $50,000 is to be paid solely as an assistance to the erection of said new plant and enters into the capitalization thereof, and was and is purely a legitimate business transaction, promoting

the interests of these respondents, the Stock Yards Company, the railroads, the stock raisers, the labor market, and the retail butcher and consumer.

DAVID M. PFAELZER,
ABE PFAELZER,
JONAS L. PFAELZER,
By McEWEN, WEISSENBACH, SHRIMSKI & MELOAN,
Their Solicitors.

WILLARD M. McEWEN,
Of Counsel.

145 *The secondly amended joint and several answer of David M. Pfaelzer et al.*

Filed May 1, 1911.

In the Commerce Court of the United States.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission, complainants,
vs.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, A corporation: The Chicago Junction Railway Company, a corporation: The Chicago Junction Railways and Union Stock Yards Company, a corporation: and David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons, defendants. } No. 15.

The amended joint and several answer as secondly amended of David M. Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, defendants in said bill of complaint, filed by leave of court first had and obtained.

These defendants, saving and reserving unto themselves any and all manner of benefit of exception to the many errors and inconsistencies in the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as these defend-
146 ants are advised it is necessary or material for them to make answer unto, answering say:

These defendants admit that the bill of complaint in this cause of the United States of America was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

These defendants admit that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

As to the averments contained in Paragraph II of the bill of complaint, in respect to the organization of the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

III.

As to the averments contained in Paragraph III of the bill of complaint, with respect to the organization of the Chicago Junction Railway Company (hereinafter called the "Junction Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

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IV.

As to the averments contained in Paragraph IV of said bill of complaint, with respect to the organization of the defendant The Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "Investment Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

V.

As to the averments contained in Paragraph V of said bill of complaint, these defendants admit that they are citizens of the State of Illinois, residing in the city of Chicago, but deny that they constituted a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, with their principal place of business and principal operating office in the city of Chicago, and within the northern district of the State of Illinois, at the time of the filing of the bill of complaint herein.

VI.

These defendants admit each and every of the averments contained in Paragraph VI of the said bill of complaint.

VII.

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With respect to the averments contained in Paragraph VII of said bill of complaint, touching the organization and the purposes of the organization of the Stock Yard Company, and its method of doing business, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

With respect to the lease from the Stock Yard Company to the Chicago & Indiana State Line Railway Company, as referred to and marked "Exhibit D," and attached to said bill of complaint, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

VIII.

With respect to the averments contained in Paragraph VIII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

IX.

With respect to the averments contained in Paragraph IX of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

149 X.

With respect to the averments contained in Paragraph X of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XI.

With respect to the averments contained in Paragraph XI of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XII.

With respect to the averments contained in Paragraph XII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XIII.

Further answering these defendants admit that David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer were engaged in the business of buying, slaughtering, and selling for general consumption, slaughter house products, under the name and style of Louis Pfaelzer

150 & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yards Company.

These defendants further answering aver and state the fact to be that the co-partnership business heretofore conducted by them was taken over on the 8th day of June, 1910, by a corporation organized under and by virtue of the laws of the State of Illinois, named and styled Louis Pfaelzer & Sons, and that said corporation filed its charter in the office of the Recorder of Deeds of Cook County, Illinois, as provided under and by virtue of the statutes of the State of Illinois in such case made and provided, on the 13th day of June, A. D. 1910.

These defendants further answering admit that they agreed to enter into a certain contract or agreement with the Stock Yards Company, a copy of which contract or agreement is attached to said bill of complaint and marked "Exhibit E" and made a part thereof.

With respect to the averments in said bill of complaint and referring particularly to the contract marked "Exhibit E" and to the effect that the carrying out of the said contract will increase the amount of interstate freight coming in and going out of the yards of the said Stock Yards Company and over the lines of the railroad owned by the Stock Yards Company and operated by the Junction Company, and likewise increase the earnings collected by

151 said Stock Yards Company on live stock and its charges for feed; and also increase the earnings of the Junction Company by increasing the amount of the property transported by the Junction Company in interstate commerce over the lines of the railroad owned by the Stock Yards Company and thus increasing the rentals of the Stock Yards Company accruing from the earnings derived from the transportation of property in interstate commerce by railroad under said lease to the Junction Company, these defendants are not advised and neither admit nor deny the same, but demand strict proof thereof; and state the fact to be that all of such effects, if true, are merely incidental; and further say that the payment of moneys provided for in said agreement or contract has nothing whatever to do, nor was it, or is it intended to have anything to do with the transportation of property and the rates and charges therefor, and has no connection therewith whatsoever.

These defendants further answering say that they deny that the payment of the said money to them, or either of them, or to the said corporation, Louis Pfaelzer & Sons, will be a rebate and an unlawful discrimination and violation of the act to regulate commerce and deny that it will constitute a device whereby an undue advantage will be given to and an unlawful discrimination practiced in favor of them, or either of them, by the said Stock Yards Company; and further deny that such payment will constitute a concession, rebate, or

drawback and an unlawful discrimination whereby the property of them, or either of them, or of said Louis Pfaelzer & Sons, the
152 corporation, is by a device transported as interstate commerce over the lines of railroad owned by the Stock Yards Company at a less charge than is charged to other shippers for the same service; and these defendants deny that such payment will constitute a violation of the act of Congress approved February 19, 1903, and as amended June 29, 1906, commonly known as the "Elkins law."

These defendants further answering say that at no time during the negotiations conducted between them, or either of them, and the said Stock Yards Company subsequent to the proposition of such Stock Yards Company to pay to them the amount agreed upon and set out in said contract, was anything said to them, or either of them, with reference to the transportation of property of any kind or the charges to be exacted by said company from these defendants by any of the officers or agents of said Stock Yards Company, or anyone acting for it; nor is there any agreement or understanding expressed or implied on the subject whatsoever.

These defendants further answering say that prior to and until the 21st day of January, 1910, they were co-partners with Louis Pfaelzer, and were engaged in the business of buying, slaughtering, and selling for general consumption, slaughter house products, under the name and style of Louis Pfaelzer & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yards Company, and that while
153 so engaged in business certain inspectors and investigators representing the Bureau of Animal Industry, a department of the United States Department of Agriculture (hereinafter referred to as "Agricultural Department"), in the course of the prosecution of their duties as such, visited and inspected the packing plant then operated by the said Louis Pfaelzer & Sons at a time early in the year 1907, and that after such inspection said Louis Pfaelzer & Sons received a notice in writing from the said Agricultural Department under date of March 30, 1907, directing them, the said Louis Pfaelzer & Sons, to make certain charges, replacements, and improvements, the making of which changes, replacements, and improvements necessitated the expenditure of large sums of money.

These defendants further answering say, that the said Louis Pfaelzer & Sons endeavored to and did comply with said notice in writing, under said date, and that thereafter, to wit, on the 22nd day of October, 1908, they received a further notice in writing from the said Agricultural Department, in substance, to the effect that they, the said Louis Pfaelzer & Sons, were directed to take immediate steps to provide a new establishment for their business, which would meet with the requirements of the regulations of the said Agricultural Department, and that upon receipt of said notice said

Louis Pfaelzer & Sons endeavored to secure a suitable site for the erection of an establishment which would meet with the requirements of the regulations of the said Agricultural Department; that to comply with the said direction of the said Agricultural
154 Department it would become necessary to destroy the entire plant then occupied by the said Louis Pfaelzer & Sons, which would thereby cause the said Louis Pfaelzer & Sons to sustain great loss; that shortly after the receipt of said notice and on, to wit, the 8th day of January, 1909, said Louis Pfaelzer & Sons received a further notice in writing from the Honorable James Wilson, Secretary of the Department of Agriculture of the United States, to the effect that on and after the 10th day of April, 1909, Government inspection of the products of said Louis Pfaelzer & Sons would be denied to said Louis Pfaelzer & Sons.

These defendants further answering say, that the carrying into effect of such order of the said Secretary of the United States Department of Agriculture would mean, in effect, the total destruction of their entire business; that thereupon the said Louis Pfaelzer & Sons called upon the officers of the Stock Yards Company for financial assistance in the matter of the erection of a new and modern packing plant, and that the said Stock Yards Company refused to the said Louis Pfaelzer & Sons the financial assistance so sought; that said Louis Pfaelzer & Sons, in order to protect the business already established by them in the city of Chicago and in the various States of the United States of America, took steps to secure a site for the erection of a new packing plant in the city of Kansas City, Missouri, they being unable to secure a proper and suitable site for the erection of such plant, in the city of Chicago, in said Stock Yards district, without paying therefor so large a sum of money as to make it doubtful as a matter of business ex-
155 pediency to expend; that shortly thereafter the Stock Yards Company, by its officers and agents, being informed of the proposed removal of the packing plant of said Louis Pfaelzer & Sons to Kansas City, Missouri, negotiations between these defendants and said Stock Yards Company were resumed and as a result thereof said Stock Yards Company agreed with the said Louis Pfaelzer & Sons that if they would remain within the district known as the Stock Yards district and erect a packing plant contiguous to and in the vicinity of the cattle pens of the Stock Yards Company they, the said Stock Yards Company, would contribute towards the erection of such packing plant the sum of $50,000 in cash; that relying upon the good faith of this arrangement the said Louis Pfaelzer & Sons abandoned their plans for the erection of a new packing plant in Kansas City, Missouri, and proceeded to and did purchase a large amount of real estate in the said Stock Yards district, paying therefor the sum of twenty-nine thousand seven hundred and fifty-five ($29,755) dollars; that said Louis Pfaelzer & Sons employed the services of competent engineers and architects to prepare plans for the proposed buildings, which said plans have been

prepared and have been submitted to and revised and accepted by the said Agricultural Department.

These defendants further answering say that they are the sole stockholders and sole directors of the corporation named and styled Louis Pfaelzer & Sons, which said corporation is the successor to the copartnership heretofore existing between these defendants, and
156 that David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer are the president, vice president, and secretary-treasurer, respectively, of said corporation; that these defendants, relying upon the good faith of the said Stock Yards Company to carry into effect the provisions of the said contract, entered into another certain contract with the Ralph and Sumner Sollitt Company, general contractor, for the erection of the buildings to compose the packing plant, in accordance with the plans and specifications hereinbefore referred to, and agreed to pay under said contract to said Ralph and Sumner Sollitt Company, for the erection and construction of said packing plant, two hundred and twenty thousand ($220,000) dollars; that said building is in course of erection and nearing completion and that said corporation has caused to be issued its certain bonds in the total sum of one hundred and twenty-five thousand ($125,000) dollars, the payment of which bonds is secured by a trust deed to A. S. Peabody, trustee, covering the property of the said corporation, and that these defendants, as individuals, relying upon the good faith of the said Stock Yards Company and its purpose to carry out the agreement set up in said contract marked "Exhibit E" guaranteed the payment of said bonds so issued at the various maturities thereof.

These defendants further answering say that the entering into said contract by them, or either of them, or by the said corporation, Louis Pfaelzer & Sons, is not a violation of any act of Congress in such case made and provided.

These defendants aver that the said corporation, Louis
157 Pfaelzer & Sons, is the successor of the partnership formerly conducted by the e defendants under and by virtue of the arrangement provided for in said "Exhibit E," and these defendants admit that unless restrained by the order of this honorable court they will cause said corporation to execute said contract known as "Exhibit E" and to carry out the terms and provisions thereof for and on behalf of these defendants.

* * * * * * *

That at and long prior to the time of the making of said contract for the payment of $50,000 there were stock yards located in various cities of the West and Southwest, namely, at Chicago, Illinois; Milwaukee, Wisconsin; Sioux City, Iowa; Omaha, Nebraska; St. Joseph, Missouri; Kansas City, Missouri; St. Louis, Missouri; East St. Louis, Illinois; Fort Worth, Texas; Dallas, Texas; St. Paul, Minnesota; Denver, Colorado; Oklahoma City, Oklahoma, at which were located large packing and slaughtering plants, which consumed live stock and furnished a market for the same.

That it has been customary with all of the respective owners of such stock yards, for the purpose of building up and retaining a market, to assist persons and corporations by way of donations, land or money, or both, to locate packing and slaughtering and other plants, which not only benefited such stock-yards owners, but also was of great value to the stock raisers of the contiguous district and equalized the handling of stock throughout the country, by furnishing various convenient places of slaughter and preparation for the market.

158 That as an illustration of the extent to which this custom is followed these respondents aver that within the past year the owners of the yards at Oklahoma City paid to a large packer the sum of $750,000 to locate a slaughterhouse at such yards.

As a further illustration respondents aver that several years ago the said Stock Yards Company at Chicago gave to a packer land for a plant and $500,000 in cash. That this practice and custom has existed for many years and is the result of competition between and among the several cities having stock yards industries.

That these respondents aver, on information and belief, at the time when it became necessary for these respondents to build a new plant or cease business, they could have obtained from the owners of the stock yards at Kansas City $200,000 to locate at that place.

That the slaughtering business at Chicago is conducted by about twelve persons and corporations, of which six do about 95%, and of the remaining 5% these respondents do about 1% of the total business.

That some one or more of the so-called "big six" doing 95% of the business as aforesaid have plants at all of the places above named and by reason of their size and facilities and diverse locations are able to exercise a great control of the market in all places, and but for the competition of the smaller packers, like these respondents, would exercise an almost absolute control over prices, and a substantial monopoly.

That these respondents do not, nor does their successor, pay
159 any freight to railroads whatever, except that in certain months of each year they are usually unable to get a high enough grade of beef for their trade in Chicago, and therefore buy in the Kansas City market in those months cattle by the carload, which they ship to Chicago and kill at their said plant, and occasionally purchase a few hogs, and sometimes lambs, in the Louisville, Ky., market; that the freight paid for this service in the five years last past was for cattle $10,911.61, for lambs $3,099.05, for hogs $169.34, making a total of $14,180, or a yearly average of $2,836 paid to the Chicago Junction Railway. That otherwise respondents substantially pay no freight.

That all coal, salt, and supplies are furnished at a lump price by weight f. o. b. cars at the plant, and any freight paid therefor is by respondents as agents of the seller and deducted from the lump sale price on settlement.

That in the past almost the entire product of the plant, excepting by-products, has been sold to the local city trade, and not handled

by rail; that the freight on whatever shipments are made is paid by the consignee and not for or by these respondents or their successor.

That the establishing of the plant of these respondents at the yards takes up about 125 feet of side track and there is much other property available for other plants on the side tracks and switches of the said Stock Yards Company.

That said $50,000 is to be paid solely as an assistance to the erection of said new plant and enters into the capitalization thereof, and was and is purely a legitimate business transaction, promoting the
160 interests of these respondents, the Stock Yards Company, the railroads, the stock raisers, the labor market, and the retail butcher and consumer.

* * * * * * *

XIV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XIV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XVI.

Further answering, these defendants say that the copartnership heretofore existing between David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer is no longer engaged in the business set out in Paragraph XIII of said bill of complaint or in any business whatsoever.

161 XVII.

Further answering, these defendants deny that the complainants are entitled to the relief prayed for, or any part thereof, against them or either of them, and so having answered the said bill of complaint these defendants pray to be hence dismissed, with their costs in this behalf most grievously sustained; and these defendants will ever pray, etc.

DAVID M. PFAELZER,
ABE PFAELZER,
JONAS L. PFAELZER,
By MCEWEN, WEISSENBACH, SHRIMSKI & MELDAN,
Their Solicitors.

WILLARD M. MCEWEN,
Of Counsel.

162 *Order that amended answer of David Pfaelzer et al. stand as answer of Louis Pfaelzer and Sons, a corporation.*

Entered May 22, 1911.

United States Commerce Court.

THE UNITED STATES OF AMERICA, upon application of the Attorney General at the request of the Interstate Commerce Commission, petitioner, *vs.* UNION STOCK YARDS & TRANSIT CO. et al., respondents.	No. 15.

Now comes the petitioner by the Attorney General, and also come the respondents by their respective counsel, and also comes "Louis Pfaelzer and Sons," a corporation of Illinois, by Willard M. McEwen, its solicitor, and thereupon on the motion of its said solicitor (the Attorney General consenting), it is ordered: That the answer as amended of David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer stand as the answer of Louis Pfaelzer & Sons, a corporation as the successor of the co-partnership Louis Pfaelzer and Sons, and conducting the business of slaughtering, etc., as heretofore carried on by said copartnership.

MARTIN A. KNAPP,
Presiding Judge.

163 *Journal entry.*

Proceedings of May 22, 1911.

UNITED STATES OF AMERICA, EX REL. ATTORNEY GENERAL, petitioner, *vs.* UNION STOCK YARD & TRANSIT CO. ET AL., RESPONDENTS.	No. 15.

* * * Thereupon, said cause came on to be heard on the bill of complaint and answers: Mr. William E. Lamb, Esquire, special assistant to the Attorney General, appearing on behalf of the United States.

164 *Journal entry.*

Proceedings of May 23, 1911.

UNITED STATES OF AMERICA, EX REL. ATTORNEY GENERAL, petitioner, *vs.* UNION STOCK YARD & TRANSIT CO. ET AL., RESPONDENTS.	No. 15.

Said cause came on for further hearing before the court, and the arguments of counsel were concluded: William E. Lamb, Esquire,

and Blackburn Esterline, Esquire, special assistants to the Attorney General, appearing on behalf of the United States; Ralph M. Shaw, Esquire, William D. Guthrie, Esquire, and Willard M. McEwen, Esquire, on behalf of the respondents. Mr. Esterline was given five days within which to file brief; and Mr. Shaw was given five days after receipt of Mr. Esterline's brief to file brief in reply. Thereupon, said cause was taken under advisement by the court.

165 *Opinion.*

Filed November 14, 1911.

United States Commerce Court.

UNITED STATES EX REL. ATTORNEY GENERAL
v.
UNION STOCK YARD AND TRANSIT CO. ET AL. } No. 15—May session, 1911.

On petition and answer.

Mr. Blackburn Esterline and Mr. William E. Lamb, special assistants to the Attorney General, with whom Mr. James A. Fowler, assistant to the Attorney General, was on the brief, for the United States of America.

Mr. Ralph M. Shaw, with whom Mr. John Barton Payne and Mr. Silas H. Strawn were on the brief, for Union Stock Yard and Transit Company of Chicago and for the Chicago Junction Railway Company.

Mr. W. D. Guthrie for the Chicago Junction Railways and Union Stock Yards Company.

Mr. Willard M. McEwen for Louis Pfaelzer & Sons.

Before Knapp, presiding judge, and Archbald, Hunt, Carland, and Mack, judges.

166 [Nov. 14, 1911.]

Mack, judge.

This proceeding is brought to compel the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Co.") and the Chicago Junction Railway Company (hereinafter called the "Junction Co.") to file with the Interstate Commerce Commission tariffs in conformity with section 6, and reports and statements in conformity with section 20, of the act to regulate commerce (act of Feb. 4, 1887, as amended June 29, 1906; 34 Stat., 586 and 593) and of the rules and regulations adopted by the Commission pursuant thereto, and to enjoin the Stock Yard Co. and the individual defendants comprising the firm of Louis Pfaelzer & Sons (hereinafter called "the Pfaelzers") from carrying out the terms and provisions of a contract made by them, and the Chicago Junction Railways and Union Stock Yards Company (hereinafter

called the "Investment Co.") from carrying out its written guaranty of this contract.

The case has been heard on petition and answer. While the answers of the Stock Yard Co. and the Investment Co. neither admit nor deny certain allegations as to the activities of the Junction Co., which the latter in its answer admits to be true, and while no testimony has been offered in the case, it has been presented, both in the briefs and oral arguments by all counsel, on the basis of the truth of those allegations that are so confessed by the
167 Junction Co. We have, therefore, considered the petition, as against each defendant, in this light.

Although the petition is clearly multifarious in joining mandamus proceedings, authorized by the act to regulate commerce, to secure compliance with its provisions, and injunction proceedings, authorized by section 3 of the act to further regulate commerce known as the Elkins Act (act of Feb. 19, 1903, 32 Stat., 848), to restrain an alleged illegal rebate and discrimination, inasmuch as defendants do not raise this objection, we shall, without approving such practice, proceed to a determination of the petitioner's rights under both aspects of the case.

The Stock Yard Co., a corporation organized in 1865 by a special but public act of the State of Illinois, was thereby authorized not only to maintain stockyards and a hotel, but also to construct and maintain railway lines, tracks, and switches so as to connect its yards, then outside of the city of Chicago, with the tracks of all railroad lines entering Chicago within prescribed limits; to maintain the railroad, and to transport and allow to be transported thereon, between such railroads themselves as well as between its yards and such railroads, property of every kind; to fix the rates of toll, provided "all fees and charges for freight * * * shall be subject to any general law * * * in reference * * * to railroads." It was further authorized to maintain its lines
168 of railway across public streets and highways, and was given power of condemnation.

The act provided that nothing therein contained should be construed as giving authority to maintain or operate a railroad for the conveyance of passengers or freight in the city of Chicago; but since 1865, the date of the charter, the city of Chicago has been extended so as to cover all of the property of the Stock Yard Co.

It was further authorized by the charter to lease its property. Pursuant to this authority, it entered into an agreement with the Junction Co., a corporation organized under the general railroad act of the State of Illinois, whereby, in 1897, it, in effect, leased to the Junction Co. all of its railroad and railroad equipment for a term of 50 years. Under the agreement the Junction Co. obligated itself to conduct, operate, and manage the property; to perform all duties pertaining to a railroad, or of a railroad character, imposed upon the Stock Yard Co.; and to pay, as rental, two-thirds of the

entire net earnings and revenue derived by it from the operation of all its lines of railroad and railroad track.

The Junction Co. further obligated itself to submit its books and papers showing its operations to the nominee of the Stock Yard Co.

The Junction Co., at the time of the lease and for ten years thereafter, was the owner of other railroad property, and was concededly a commmon carrier within the act to regulate commerce. In
169 1907, however, it sold all of its other property. Since that time its sole business has been the operation of the railroad so acquired from the Stock Yard Co., lying wholly within the State of Illinois, in substantially the same manner as it had been operated, prior to the lease, by the Stock Yard Co.

The line of road consists of certain main tracks, running east and west from a point on the lake front in the city of Chicago near the intersection of Thirty-ninth Street with the tracks of the Illinois Central Railroad, and thence in a general westerly and northwesterly direction to a point some eight and a quarter miles distant from the lake, all in the State of Illinois, its parallel main tracks between these points aggregating about forty miles. The Union Stock Yards are located about two miles from the lake front, and, in addition to connecting with these yards, the Junction Co. also has switch tracks to other industries located at or near there, aggregating some two hundred and fifty miles, by means of which main and switch tracks it serves in the neighborhood of six hundred and fifty (650) industries, all being in or near what is known as the stock yards district of Chicago.

According to the record in this case, the Junction Co. neither receives goods for carriage on its own account nor deals on its own account with shippers or consignees. It is not necessary for the purposes of this decision to enumerate all of its activities in
170 the operation of the road. Among them is the hauling of loaded cars on behalf of trunk-line carriers, by whom it is employed and paid, from such trunk lines to the industries on its tracks or to other trunk lines connecting with it. These cars are brought by the trunk-line carriers from points outside of the State destined to points in the district served by it or to points outside of the State. They are placed by the incoming trunk-line roads on what are known as the receiving tracks of the Junction Co., each car being marked with a transfer card giving the name of the consignee of the freight therein contained, and thus indicating its destination. The Junction Co. picks them up with its own motive power and transports and delivers either to the designated consignee or industry on its line, or, when destined to points beyond the State limits, to the proper outgoing trunk line. These cars are transported in one unbroken line of railroad carriage from the several points where they originate outside of the State over the line of the Junction Co. after their arrival at Chicago, to the railroad of the outgoing connecting carrier, and then to their points of destination

outside of the State; this is done without the intervention of the shipper or consignee, or the performance by either of them of any intermediate act or service; and they move in this way on through bills of lading, covering the whole distance traversed, as do those also which are consigned and delivered to consignees and industries on the line of the Junction Co. in the stock-yards district.

171 For the hauling or so-called switching service so rendered, the Junction Co. is paid by the trunk-line carriers which request the service a specified sum, according to an established schedule of tariffs or charges. For instance, for the switching of cars back and forth, to and from the receiving tracks of the various connecting trunk lines to the stock yards, or to the industries in that vicinity, the Junction Co. is paid a certain sum per car by the trunk-line carriers, and this it receives as a distinct switching charge, regardless of the commodity or character of freight in the car, its origin, destination, or the through-freight charge of the trunk-line carriers. No specific charge therefor is made to the shipper or consignee, either by the Junction Co. or by the trunk-line company; the trunk line is said to absorb the charge.

Since the lease of 1897, the Stock Yard Co. has had nothing whatever to do with the railroad or railroad business, which has been carried on exclusively by its lessee. It has confined itself, apart from the operation of the hotel, to conducting a stock yards business, with all which this involves and implies. It is not a dealer in cattle, but simply maintains a public market where all kinds of live stock can be bought and sold. As part of this business, it receives and cares for stock delivered by trunk line carriers at its docks and chutes, unloading them for a specific amount per car paid to it by the carriers.

172 The stock, so unloaded at its yards, is mostly stock consigned on through bills of lading to parties doing business in and around the stock yards or stock yards district, which has been transported by the carriers from points outside of the State to the stock yards or to points on the line of the Junction Co. It also loads onto cars furnished by the trunk-line carriers stock outbound from the yards, for which it similarly receives a fixed sum per car from the carrier for which it performs this loading service, the stock so loaded being generally consigned from owners and dealears doing business in and about the stock yards district and being moved on through bills of lading over the Junction Co. tracks to the tracks of the trunk-line carriers, which haul them to point of destination beyond the limits of the State. The Stock Yard Co. also loads and unloads live stock consigned to or shipped by industrial establishments located along the right of way of the Junction Co., for which service the trunk-line carrier that handles the shipment pays a fixed sum per car. By reason of these facilities and business arrangements both live and dead freight is moved in an unbroken line of railroad carriage on through bills of lading from points outside of the State of Illinois to the stock yards and industrial establishments located in that vicinity, and from such stock yards and industrial establishments to out-

side points. The Stock Yard Co., however, neither issues bills of lading for these shipments, whether through bills or others, nor participates in the freight rates charged by the carriers. It is
173 compensated solely in the manner indicated for the services which it performs. It does advance to the carriers, however, the freight charges due on bills of lading for stock delivered at the stock yards, collecting the same in turn from the consignees. But these advancements are made for the convenience and accommodation of its customers, the commission men, who buy and sell stock at its yards, and have nothing whatever to do with the charges which it makes for loading and unloading. These are paid by the trunk line carriers as a separate matter. As part of its stock yards business the Stock Yard Co. further frequently feeds and waters live stock in transit, for which it is similarly paid a fixed compensation by the carrier handling the stock to and from its yards. And it also feeds, beds, and waters live stock shipped to consignees doing business at or near its yards, for which it is paid by the commission men who are engaged at its yards in buying and selling cattle. It also frequently makes alterations and repairs in cattle cars, for which it is paid by the carrier requesting the service. And, finally, for the accommodation of its patrons, it has built and conducts a hotel in the neighborhood of its yards as empowered by its charter.

The Investment Co. is a corporation organized under the laws of the State of New Jersey solely as an investment company for the purpose, among other things, of holding stock of the Stock
174 Yard Co. It owns over 90 per cent of this stock as well as practically all of the stock of the Junction Co., but it owns none of the property of, and neither manages nor controls, either company, except in so far as its stock ownership enables it to elect their directors.

The contract between the Stock Yard Co. and the Pfaelzers in substance obligates the former to pay $50,000 to the latter in order to enable them to rebuild their packing plant at a specified place in the neighborhood of the Stock Yard Co.'s premises. In consideration thereof the Pfaelzers bind themselves to rebuild the plant, to conduct their business exclusively at the specified place, and either to buy all live stock slaughtered or packed by them in or within 200 miles of Chicago, for a period of fifteen years, at the yards of the Stock Yard Co., or, in lieu thereof, to pay it the same customary yardage, tolls, and charges that it would receive if such live stock were sent to its yards and there bought by them.

The questions presented on this record are:

First. Is the Junction Co. a "common carrier engaged in transportation of property by railroad from one State to another State of the United States" within section one of the act to regulate commerce and therefore subject to the provisions of sections 6 and 20 thereof?

Second. Is the Stock Yard Co. the owner of a railroad en-
175 gaged in interstate commerce within such section 20 and therefore subject to its provisions?

Third. Is the Stock Yard Co. a common carrier within such section one and therefore subject to section 6 thereof and also to the provisions of section 3 of the Elkins Act?

Fourth. Is the Investment Co. such a carrier and therefore subject to section 3 of the Elkins Act?

Fifth. Are the contract and guaranty a violation of the act to regulate commerce or of the Elkins Act?

First. Counsel for the Junction Co. expressly concede in this case that it is a common carrier. They deny, however, that it is engaged in interstate commerce. Counsel for other defendants, while not expressly denying, nevertheless intimate that it is not a common carrier.

That it is a common and not a private carrier, if it be a carrier at all, is manifest from the fact that it is organized under the general railroad law of Illinois; under its constitution, article 11, section 12, all railroads are "declared public highways and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law." Moreover, it offers its services by the publication of a tariff in general circulation in Chicago to all the public who are in a position to avail them-
176 selves thereof. That the class is a limited one does not affect the nature of the business or render it any the less public or common in its character. It is, however, suggested that it is not a carrier at all because what it hauls is the loaded car, and not the freight itself with which the car is loaded.

That cars as well as other property may be the subject matter of carriage is, however, well established: P. & P. U. Ry. Co. v. C. R. I. & P. Ry. Co. (109 Ill., 135); M. P. Ry. Co. v. C. & A. Ry. Co. (25 Fed., 317); U. S. v. C. & N. W. Ry. Co. (157 Fed., 616, 619).

It is further contended that the trunk line alone is the carrier and that the Junction Co. is merely its agent and instrumentality, and only as such agent performing, not a transportation or carriage, but a mere switching service. This service is likened to that of a towboat, which, under some circumstances and in some jurisdictions, is held not to be a carrier.

That the trunk line has agreed to carry beyond its own line, and has expressly assumed a liability for the acts of connecting carriers, which, under the so-called Carmack amendment to section 20 of the act to regulate commerce (act of June 29, 1906, 34 Stat., 584, 595), the law would now impose upon it as the initial carrier, does not, however, render the connecting carrier any the less the transporter or carrier of the property while it is actually hauling the loaded car on its own tracks, with its own motive power and its own
177 servants, absolutely free from any control or direction on the part of either trunk line. To call this service a switching service does not, in any respect, change its character; whether the

work done be to switch a car 1 mile or to haul it 200 miles, it is none the less a transportation or carriage of the car and its contents by an independent operator. As was well said in M. P. Ry. Co. v. Grocery Co. (55 Kans., 525):

"A railroad transporting a carload of freight one mile, using a switching engine for motive power, is just as much a common carrier as if the distance were a thousand miles by regular freight train. The fact that compensation for this particular service was paid by the St. L. & S. F. Ry. Co., while it might render that company also responsible, could not relieve defendant company from its liability as a carrier."

If, then, it be a common carrier of this property, it must be immaterial how or by whom it is paid. Whether its rate is a flat one or a proportion of the through rate, whether it is paid by the trunk line and absorbed or by the shipper or consignee, does not determine the nature of its services or alter the character of its offer to the public—to serve them as a common carrier.

The Interstate Commerce Commission in Cattle Raisers' Association v. F. W. & D. C. Ry. Co. (7 I. C. C. Rep., 513, 536), while holding, as counsel urge, that this very Stock Yard Co., under which the Junction Co. holds by lease, was not, prior to the lease of 1897, a
178 common carrier in certain of its activities, also expressed the opinion, which counsel have not noted, that it was a common carrier with reference to the activities hereinabove described and now performed by the Junction Co. The commission, moreover, point out (p. 537) that the Bridge Co., in K. & I. Bridge Co. v. L. & N. Ry. Co. (37 Fed., 567), which is here relied upon, was not, under its act of incorporation, a common carrier at all.

In Union Stock Yards Co. of Omaha v. U. S. (169 Fed., 401), the Circuit Court of Appeals while holding, as counsel claim, that the Stock Yard Co. of Omaha was not a common carrier in its stockyards activities, also held that, as to its railroad activities, which are identical with those of the Junction Co., it was a common carrier engaged in interstate commerce within the safety-appliance law. On this point Mr. Justice Van Devanter said:

"It is the contention of counsel for the Stock Yards Company that the service performed by it is such only as the railroad companies are bound to perform for their patrons; that having no facilities for performing this service at South Omaha, the railroad companies merely employ the Stock Yards Company to furnish the requisite facilities and to operate them; that the performance of this service under such an employment does not make the Stock Yards Company a common carrier or its property used therein a railroad; and that this service is purely a local switching service which fol-
179 lows or precedes transportation, and is not interstate commerce. * * *

"It is of little significance that the stockyards company does not hold itself out as ready or willing generally to carry live stock for the public, for all the railroad companies at South Omaha do so

hold themselves out, and it stands ready and willing to conduct, and actually does conduct, for hire a part of the transportation of every live-stock shipment which they accept for carriage to or from that point, including such shipments as are interstate."

Belt Ry. Co. of Chicago v. U. S. (168 Fed., 542); U. S. v. Sioux City Stockyards Co. (162 Fed., 556); U. S. v. Union Stockyards Co. (161 Fed., 919); and the dictum in McNamara v. The Wash. Terminal Co. (39 Wash. Law Rep., 458) are in accordance with the decision of Mr. Justice Van Devanter, and hold a company performing these activities not only a common carrier but also engaged in interstate commerce within the safety appliance or employer's liability acts.

If, then, the Junction Co. be, at least as to some of its activities, a common carrier, is it also "engaged in the transportation of property by railroad from State to State"?

Its location wholly within one State, the switching nature of its activities, which are said to be merely incidental to the transportation within that State, and its failure to receive a division or definite percentage of the through inter-state rate, are urged in support
180 of the contention that it is not engaged in transportation from one State to another. Counsel, moreover, contend that the amendment of June 29, 1906, to the first section of the act to regulate commerce, narrows the class of railroads wholly within one State that are now subject to the act. Prior to the amendment, the act read: "Common carriers engaged in the transportation of property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment, from one State to any other State." By the amendment of 1906 the clause beginning "or partly" and ending with the word "shipment" was inclosed in parentheses.

It is urged that under the correct construction of the original section one, a railroad, even though wholly within one State, came within the act if it carried freight within that State under a common arrangement with an interstate carrier; but that, since under the amendment the common arrangement refers only to transportation partly by water and partly by rail, a carrier operating wholly by rail and within one State does not come within the amended act, even though it operate under such a common arrangement; in other words, that only railroads whose lines cross State boundaries are now subject to the Commission.

The case of C. N. O. & T. P. Ry. Co. v. I. C. C. (162 U. S., 184) does not, however, sustain the contention that prior to the amendment the clause "under a common control," etc., affected as
181 well the carriage wholly by railroad as the carriage partly by railroad and partly by water. (U. S. v. Colo. & N. W. Ry. Co., 157 Fed., 321, 329, 332.)

Whatever be the true construction of section one as originally framed—and we agree with the Circuit Court of Appeals in U. S. v. Colo. & N. W. Ry. Co. (157 Fed., 321, 327), that "it is probable that

the clause 'under a common control, etc.,' qualified carriers 'partly by railroad and partly by water' only, and had no application to such carriers 'wholly by railroad'"—it is clear that the sole purpose of the amendment was to remove any possible doubt on this point and not to withdraw from the operation of the act railroads wholly within one State, but engaged in the transportation of articles while moving in interstate commerce, whether with or without a common arrangement with connecting lines. (U. S. v. C. & N. W. Ry. Co., supra, at 328.)

The interstate commerce begins with the shipment of the article from one State directed and destined to another State. It ends only with the delivery at destination. All common carriers by railroad which participate in its actual transportation from the time of shipment to the time of delivery are engaged in the transportation of property from one State to another, whether their services be performed wholly within one State or in more than one State, whether such services be primary and called carriage or incidental and called switching, whether the carrier be paid a flat sum per
182 car or a percentage of the through rate, and whether such payment be made directly by the shipper or consignee on the one hand or by the initial or final carrier on the other hand. (U. S. v. Ill. Term. Ry. Co., 168 Fed., 456; Pac. Coast Ry. Co. v. U. S., 173 Fed., 448.)

While it is conceded that the cases above cited support these views, at least when the safety-appliance acts are in question, it is sought to distinguish most of them on the ground that the safety-appliance acts and the interstate commerce act have a different purpose and scope; that the former are intended primarily to regulate the cars at any time used in interstate commerce, and not primarily the carriers themselves in their relation to the public. Some statements from the decision of Judge Sanborn (U. S. v. C. & N. W. Ry. Co., 157 Fed., 321) to the effect that the two acts are not in pari materia, and therefore not necessarily to be construed alike, are cited in support of this contention. The argument, however, which was answered in that opinion, was as follows: The original interstate commerce act subjected to the control of the Interstate Commerce Commission a carrier by railroad within one State only if it operated under a common arrangement with a carrier in another State. That act was passed in 1887. In 1893 the first safety-appliance act was passed. In terms it applied to every "carrier by railroad engaged
183 in interstate commerce." Nevertheless, as it, too, subjected carriers to the control of the commission, the broad language must be deemed limited to the class of carriers affected by the act of 1887, because the act of 1887 clearly declared the intent of Congress as to the extent of the class over which the commission should have control.

The answer to this argument, given by the court, was twofold: First, the major premise, though adopted by some courts, was erroneous: all common carriers engaged in interstate transportation wholly

by railroad were embraced within the terms of the original act to regulate commerce. Second, even if it were correct, there was no such relation between the two acts as to cause the court to modify the broad language of the safety-appliance act by expressly inserting therein the limitation of the interstate-commerce act.

It is manifest that this decision does not support the contention of counsel.

Again it is said that the safety-appliance act as now amended (act of Mar. 2, 1903, 32 Stat., 943) requires all cars engaged in interstate commerce, whether owned by an interstate railroad or by a private individual not engaged in the transportation business, to be equipped as therein directed. But whatever the scope of the act may be (So. Ry. Co. v. U. S., U. S. Sup. Court, Oct. 31, 1911), only the "common carrier engaged in interstate commerce" is punishable for its violation. Cases holding companies whose activities are the same
184 as those of the Junction Co., guilty of such a violation, are therefore direct authorities on the question now under consideration.

As therefore the designation used in the several acts, "carrier engaged by railroad in interstate commerce" and "carrier engaged by railroad in the transportation of property from one State to another" are not mutually exclusive, but, on the contrary, the one includes the other; as all of the authorities cited to or found by us expressly hold that such of the activities of the Junction Co. as are hereinabove set forth make it a common carrier engaged in interstate commerce by railroad; we are of the opinion that it is a common carrier engaged in the transportation of property from one State to another, within section 1 of the act to regulate commerce, and as such subject to the requirements of section 6 and section 20 of that act.

Second. By the amendment of June 29, 1906, the commission was authorized, under section 20, to require annual reports, not only "from all common carriers subject to the provisions of this act," but also "from the owners of all railroads engaged in interstate commerce as defined in this act." This is the only section of the act that refers to the owners of the railroad as distinguished from the common carrier. The evident purpose of Congress was to enable the commission to obtain certain information which the lessee operator might be unable to give, but which the owner of a railroad,
185 either operated by a common carrier engaged in interstate commerce as defined in the act or which is a highway of interstate commerce, could furnish. Whichever be the true construction of this clause (So. Ry. Co. v. U. S., supra) the Stock Yard Co., as lessor, is the owner of such a railroad, and therefore comes within the provisions of section 20. What the obligations are which that section imposes upon such owners, we are not now called upon to decide.

Third. None of the present activities of the Stock Yard Co. as the owner and manager of the stock yards and hotel business, hereinabove fully detailed, in our judgment, make it a common carrier. The facilities which it affords may enter to a certain extent

into the carriage of live and dead stock by the railroads with which it has occasion to deal. And the services which it renders in that connection may take on a public character. (Cotting v. Kansas City Stock Yards, 183 U. S., 79, 85.) But that does not affect the case. A carrier must transport or carry. It must actually engage, in other words, in the carriage of goods or persons from point to point, of which there is no semblance in anything which is done here. (Union Stock Yards v. U. S., 169 Fed., 404, 406.)

It is said, however, that the charter of the Stock Yard Co. contemplated that it should build and operate a railroad to connect with the trunk lines which enter Chicago, and empowered it so to
186 do; and that it can not escape this charter obligation or put off the character of a common carrier thereby impressed on it, either by not exercising the power or by turning over to another company the railroad which it built. The corporate character of a company—and much less the business in which it is engaged—is not determined by its reserved and unused powers. (Tiffany v. La Plume Condensed Milk Co., 141 Fed., 444; Cate v. Connell, 173 Fed., 445.) It is what it does, and not simply what it may do, by which it is to be judged. A corporation would in no sense be a common carrier if it never constructed or ran a railroad or other means of transportation merely because it had the charter power. But the Stock Yard Co. did exercise such power; it built and operated the railroad. It was, at that time, a common carrier. (Cattle Raisers' Ass'n v. F. W. D. C. Ry. Co., supra.) It has, however, pursuant to its charter power, leased its entire railroad property. Thereupon the railroad, with the locomotives and cars required to run it, went out of the possession and control of the Stock Yard Co., which thereafter confined its operations to the stock-yard business under its other charter powers. Clearly the mere reversionary ownership of the railway, which it retained, did not make it a carrier or impose upon it the obligations or duties of a carrier.

While under the law of Illinois (Penn. Co. v. Ellett, Admr., 132 Ill., 654), and of some other States, a lessor is liable like a common carrier for damages caused by its lessee, an independent operating company, the weight of authority appears to be con-
187 trary to this view. (1 Elliott on Railroads, sec. 468.) In any event, the Federal courts in Illinois have refused to follow the Illinois doctrine (Yates v. Ill. Central Ry. Co., 137 Fed., 943; Curtis v. C., C., C. & St. L. Ry. Co., 140 Fed., 777) on the ground that this is a question of general law. Moreover, whatever may be the liability of a lesser railroad for damage to persons or property while being transported over the railroad owned by it but operated by a lessee, that liability, if any, is due to the obligations imposed upon it by the State. The State may declare that a non-operating lessor shall be liable to the same extent as a common carrier for such damages. It can not, however, by such a declaration make the lessor a common carrier in fact, within the meaning of the act to regulate commerce. Common carrier as therein used is to be taken in its ordinary signifi-

cation of the one engaged in the actual work of transportation; that is, the operating company. Any doubt that may theretofore have existed on this point is, in our judgment, removed by the amendment of 1906 to section 20 of the act, whereby, in express terms, the owner of a railroad engaged in interstate commerce is referred to in contradistinction to the common carrier subject to the act. The decision of the Interstate Commerce Commission in Independent Refiners' Ass'n. v. P. R. Co. (6 I. C. C. R., 52) in so far as it holds the lessor, merely as lessor, liable for the lessee's violation of it obligations under the interstate-commerce act is not to be supported.

188 The commission in that case, however, based the liability of the lessor also on the fact that it received as rental not a fixed annual sum, but one-half of the gross revenues. A holding of the Circuit Court for the Western District of Pennsylvania, in accordance with this ruling of the commission, that lessor and lessee thereby were to be deemed in a sense joint operators, was, however, reversed in the Circuit Court of Appeals. (Western N. Y. & P. R. Co. v. Penn Refining Co., 137 Fed., 343, 356.) There would seem to be no difference in the relation between a lessor and a lessee when, as in that case, the rental is a percentage of the gross receipts, and when, as in this case, the rental is a percentage of the net receipts. The test of a joint operation by lessor and lessee corporations, like that of a partnership between individuals, is not a sharing merely in the net profits of the enterprise. (Holmes v. Old Colony R. R. Co., 5 Gray, 58.) The Stock Yard Co. can not be deemed a joint operator with the Junction Co., and therefore a common carrier within the act to regulate commerce, merely because it receives two-thirds of the net revenues of the Junction Co. or because its auditor acts for both companies.

Even if the Investment Co., by reason of its ownership of the stock of the Junction Co., could be held to be in such control of the Junction Co. as, for some purposes, to make the two identical, nevertheless, the Stock Yard Co. would not thereby, and through the

189 ownership by the Investment Co. of 90 per cent of its stock, become a common carrier. It was the common carrier's ownership of 99 per cent of the stock of the Wharf Co., organized for the very purpose of furnishing it terminal facilities as a part of the interstate system, that, in Southern Pacific Terminal Co. v. I. C. C. & Young (219 U. S., 499), was held to make the Wharf Co. a part of the common carrier's system and, therefore, a common carrier subject to the act. We see no analogy to the situation in this case.

Fourth. The Investment Co., whatever may be its control over the Junction Co. or the Stock Yard Co., can not in any sense be deemed a common carrier. Its ownership of the entire stock of the Junction Co. would not make it, any more than such ownership would make an individual, a common carrier. It might be termed, in a sense, the owner of a common carrier, but, as it is not itself a common carrier, it does not, in our judgment, come within section 1 of the interstate-commerce act, or section 3 of the Elkins Act.

Fifth. While section 1 of the Elkins Act as amended (act of June 29th, 1906, 34 Stat., 584, 587), after prohibiting "any person or corporation" from rebating or discriminating in respect to an interstate transportation, subjects to criminal prosecution "any person or corporation, whether shipper or carrier," who knowingly violates its provisions, section 3 of the Elkins Act, under which this suit is brought, authorizes equity proceedings to enjoin such of-
190 fenses only when a "common carrier" has committed or is about to commit them. If the decision in I. C. C. v. Reichman (145 Fed., 235) correctly holds that one who is neither shipper nor carrier can be prosecuted under section 1—as to which we intimate no opinion—the question whether the proposed payment to the Pfaelzers could in any way be deemed such a rebate or discrimination could be tested by proceedings thereunder in the proper forum.

We have found it unnecessary to determine or even to consider it, in view of our conclusion that neither the Stock Yard Co. nor the Investment Co. is a common carrier.

Section 6 of the interstate-commerce act imposes a positive duty on common carriers subject thereto in respect to the filing of tariffs and other documents. Section 20, on the other hand, merely authorizes the commission to require reports from common carriers and owners of railroads engaged in interstate commerce. There is no allegation in the petition filed in this cause that the Interstate Commerce Commission in any manner, either by general or special order or otherwise, has ever required the Junction Co. or the Stock Yard Co. to furnish any such reports as are contemplated under section 20. In the absence of such an order no mandamus to make such reports can be issued by this court.

It follows, therefore, that the petition must be dismissed,
191 not only as against defendants other than the Junction Co. and the Stock Yard Co., but also as against the Stock Yard Co., and the relief prayed for under section 20 of the act must be denied as against the Junction Co.

The mandatory writ will be issued against the Junction Co., as a common carrier subject to the act, to comply with its obligations under section 6 thereof.

ARCHBALD, *Judge*, dissenting in part.

The petition is well dismissed as to the three respondents, with respect to whom it is found that neither the Elkins nor the interstate commerce act apply. It is held, however, that the Junction Railway Company is a common carrier engaged in interstate commerce and therefore liable to publish tariffs and to make reports, and as to this I feel compelled to dissent.

Nothing of the kind can be predicated on the use which the Junction Railway Company permits of its tracks by the trunk-line carriers as a connecting link, to haul by their own motive power through trains moving from one to the other, east or west. In the loan of

its tracks for this purpose, however regular or persisted in, it is not exercising any of the functions of a common carrier, even though it take tolls therefor, any more than a turnpike road, upon which people travel; or a toll bridge spanning a stream, which accommodates those who go across; or a canal, which, without doing any towing, merely maintains a waterway for public use. (Moore
192 Carriers, p. 66, 67; Kentucky & Indiana Bridge Co. *v.* Louis. & Nash. R. R., 37 Fed., 573, 615; Grigsby *v.* Chappell, 5 Rich. (S. C.), 443.) The traffic which, by leave of the Junction Railway Company, goes on over its tracks in this way is that of the trunk lines using them and not of the Junction Railway. The charges for through carriage, including this part of the movement, are made by and paid to these lines, and the Junction Railway does not participate by division or otherwise therein. Neither does it know or come in contact with the shippers or consignees or with the freight which is so moved. It simply lets its road and gets pay for its use at so much a car, which neither makes it a carrier nor constitutes an engagement by it in interstate trade.

Neither is there anything to make it a common carrier in what it does at the Union Freight Station, which it maintains, in the way of receiving, distributing, and forwarding L. C. L. freight. So far as it acts with respect to this for the Baltimore & Ohio Railroad it acts as the local agent of that company, and is not chargeable in any larger degree. The receiving, loading, and forwarding which it does for others, including the collection of freight charges, when required by the trunk-line carriers to be prepaid, and the giving of receipts which are exchangeable for bills of lading therefor, may be of a somewhat more general character. But in no respect do they amount to a transportation of such freight by the Junction Railway
193 on its own account, nor does the Junction Railway Company in any sense act as a common carrier with respect thereto. It merely serves as a receiving and forwarding agent, for which it is compensated by the trunk line carriers by which its services are invoked. Having no concern as such agent in the transportation of this freight, nor any interest in the freight rates charged, and the services being complete when rendered and confined to the mere handling of the freight in the act of receiving and forwarding it, there is nothing in any of this upon which a common carriage can be charged. (Moore Carriers, p. 68.) And the same is true also with regard to the weighing of freight which it does, even though these weights are at times made the basis of freight charges and adjustments between carrier and consignor or consignee. These activities are alluded to at this time, not only because they are set up in the bill, but because they are necessary to be considered in connection with the other things which it does in determining the character which the Junction Railway Company in fact bears, which, to the extent of these activities at least, is plainly that of a mere intermediary or local agency of the trunk-line companies for which the

services are performed. And this character, in all that it does, it consistently maintains.

The so-called hauling and switching services, however, remain. And for a full understanding of them they must be given somewhat at large. The practice in this regard with respect to live and
194 dead freight is not exactly the same. Where inbound live stock originates outside of the State and is destined to points in the stockyards district, the trunk line on which it arrives generally hauls it with its own motive power over the tracks of the junction railway from the connecting point to the unloading docks, chutes, and platforms of the stockyards company, although horses are usually delivered by the Junction Railway Company after having been received from the trunk line by which they are brought in. Outbound carload shipments of live stock, however, which originate in the stockyards district and are destined to points outside the State, after being loaded into cars placed by the Junction Railway Company at the loading chutes of the stockyards, are hauled by the Junction Railway over its tracks and delivered at the proper connecting point to the trunk line which is to transport them beyond. Dead freight in carload lots brought by the trunk-line carriers from points outside of the State, destined to points in the district served by the Junction Railway on the line of its tracks, and sometimes also destined to points beyond, is placed by the trunk-line roads on what are known as the receiving tracks of the Junction Railway, each car being marked with a card, giving the name of the consignee, by which its destination may be known. And these cars the Junction Railway Company picks up with its own motive power and delivers to the designated consignee or industry; or, where they are
195 destined to points beyond the State, delivers them to the proper connecting outgoing trunk line, according to the destination indicated thereon. Through shipments of this kind move on bills of lading covering the whole distance traversed, including the tracks of the Junction Railway. And the same is true of consignments to and from the Union Stockyards or the industries of the stockyards district adjacent to the railway company's line. But the Junction Railway Company is not known to the shipper or the consignee in the transaction, all that it does being done for the trunk-line carrier which employs it, by which it is paid so much a car. And this payment also it receives as a distinct switching charge, regardless of whether the car is loaded or empty, or where it is to go to or where it comes from. The question then is whether by reason of what it so does the Junction Railway Company is a common carrier engaged as such in the transportation of persons or property in interstate trade, within the meaning of the law.

It is claimed that it is because it participates in the movement of the freight which passes over its tracks in the channels of commerce in the way which has been described, in which movement, it is said, it is an integral and essential factor and not a mere local aid. (C. N.

O. & T. P. R. R. v. Inter. Com. Com., 162 U. S., 184.) But to me that does not seem to be the case. The part which it takes in that movement is a purely local and incidental one, in no respect
196 having anything to do with the movement of freight as freight, and much less as interstate freight, its services being confined to the mere handling of the cars in which the freight is contained, this being carried on and completed also wholly within the State, and not, in any respect extending to anything beyond. It knows no one outside of the trunk line carriers by which it is employed and does not come in contact or have any relation with the shipper or consignee except as agent of the trunk line carriers in the receiving and delivering of freight. Nor has it anything to do with the freight rates charged, the tolls which it gets being taken care of by the trunk lines without appearing in those rates. The service which it performs is a mere shifting or switching service, having no relation to anything outside of that so far as it is concerned. Its undertaking is to shift the cars and not the freight which they contain, in the movement of which freight it has no interest, and as emphasizing this it is paid by the car without regard to contents, origin, or destination, whether to or from points within or without the State. When the cars are being moved by the Junction Railway Company the carrier for which in each instance this is being done, in legal contemplation as well as in actual effect, is transporting them, the Junction Railway Company, by its engineers and employees, being merely the medium by which it is accomplished. To engage in transportation within the meaning of the law there must be a participation in the result;
197 to merely touch it in passing, as here, is not enough. The statute was enacted to regulate interstate commerce, and there must be a direct or proximate connection with interstate shipments to bring the case within its terms; and the mere local shifting or handling of cars in which the commodities move incidentally in transit, wholly within the State where it is done, without any share in the freight paid, the service rendered being performed for the carrier by which the through transportation is being done, is not, in my judgment, engaging in interstate commerce in the commodities or in the interstate transportation of them, with which alone the statute undertakes to deal.

It is no doubt true that railroads performing similar switching services to those which we have here have been held to be engaged in interstate commerce within the meaning of the safety-appliance law. (United States v. Col. & N. W. R. R., 157 Fed., 321; United States v. Union Stock Yards of Omaha, 161 Fed., 919; Belt Line R. R. v. United States, 168 Fed., 542; Union Stock Yards of Omaha v. United States, 169 Fed., 404.) But there is by no means a unanimity of opinion among the judges by whom these cases were decided, and, as is pointed out by Judge Sanborn in the leading one (United States v. Col. & N. W. R. R., 157 Fed., 321) the safety-appliance act is to be given a broader construction than the interstate commerce act, even though in the description of the carriers, who are

198 made subject to it, the same terms largely are employed in each: the one act dealing with the physical or mechanical instrumentalities of interstate commerce, looking to the safety of employees, while the other is directed to the business or commercial side, regulating the rates and practices which are there to prevail. These decisions therefore, as it seems to me, are misleading and valueless as precedents, and are not to be applied.

Neither is the case like that of MacNamara v. Washington Terminal Company (39 Wash. Law Rep., 458), recently decided by the District of Columbia Court of Appeals, on which much reliance is placed. The case there arose under the employers' liability act, the validity of which, so far as the District of Columbia is concerned, does not depend, as it is pointed out, on the right of Congress to legislate with regard to interstate or foreign trade; and the question simply was whether the Terminal Company was a common carrier engaged in trade or commerce in the District within the meaning of the law. Whether the Terminal Company, however, was engaged in interstate commerce was also held to be involved; and, passing upon that question, it was decided that it was. But the considerations which led to this result are to be observed. The tracks and station of the Terminal Company, it is to be noted, are not mere facilities for the handling of passengers and baggage at Washington.

As to the railroads entering the city, the Terminal Company
199 completely monopolizes everything that is done. By its agents and employees it controls the operation of trains over its tracks into and out of the station, and with its engines it shifts empty cars in the making up of trains. Steam railroad passenger traffic entering and leaving Washington is thus completely and exclusively managed, operated, and controlled by the Terminal Company within the zone occupied by its station and tracks. The conclusion reached, in view of this, was that it was not to be taken as a mere line of railroad, carried on wholly and independently within the District, but that it was a direct component part of the various railroad systems engaged in interstate commerce, through which an entrance into Washington was obtained. And it is this integral and indispensable part which it has in interstate trade coming into and going out of the city that is the criterion by which its position as a medium of interstate commerce is to be judged. It is, in other words, as with the Southern Pacific Terminal (219 U. S., 498), its relation to and systematic connection with the interstate railroads of which it forms the Washington end, and its direct participation in the handling and management of the passenger and express traffic there, that makes it a common carrier engaged in interstate commerce within the meaning of the Federal law.

The distinction between that case and the one in hand is clear. The Junction Railway Company was not organized to supply terminal facilities, nor does it in fact supply them, for any inter-
200 state railroad or business. Nor is it a component part of any such railroad system. Nor does it, in the hauling and switch-

ing services which it performs, take the place for the time being, as to consignor or consignee, of the trunk-line carrier for which it acts. It simply moves back and forth, by means of its engines and employees, cars which it is put by the trunk-line carriers in the way to take, to which carriers in the performance of that service it is alone responsible therefor. It is not an agency of commerce as such, State or interstate, but of the railroads which have that commerce in charge. It is true that it has a railroad which it operates, over which that commerce incidentally moves. But that does not change the character of the services in which it is engaged. The part which it plays, the relation which it assumes, and the result of what it does, begin and end, so far as it is concerned, with the immediate service which it renders, which negatives the idea that anything like interstate commerce is intended or involved. Not engaging as a common carrier in such transportation, it is not brought in consequence within the terms of the act and can not be required either to publish tariffs or to make reports. And the petition ought therefore, in my judgment, to be in all respects denied.

201 *Petition for re-argument.*

Filed Nov. 25, 1911.

United States Commerce Court.

UNITED STATES EX REL. ATTORNEY GENERAL
vs.
UNION STOCK YARD AND TRANSIT COMPANY ET AL. } No. 15. May session, 1911.

Petition for re-argument.

Now comes the defendant, the Union Stock Yard and Transit Company of Chicago, and petitions this honorable court to grant a re-argument or rehearing in the above entitled cause upon the point hereinafter mentioned and for the reasons hereinafter set forth.

1. The court failed to decide whether or not the payment of the bonus charged in the complaint from this petitioner to Pfaelzer was or was not prohibited by law. (Page 26 of opinion.)

2. Apparently the court placed its failure to decide this point upon the ground that it had no jurisdiction to make the decision.

3. This question was not raised by either the Government, or the Interstate Commerce Commission, or by the defendants in this cause, and neither party was given any opportunity to present the
202 question of jurisdiction to the court.

4. The question of jurisdiction not having been raised by either party or by the court upon the hearing, it is respectfully submitted that this petitioner is entitled to be heard thereon.

5. This petitioner respectfully submits that under sections 2 and 3 of the Elkins Act the court has in this proceeding the power to pro-

hibit the payment complained of by the Interstate Commerce Commission, if in the opinion of the court it be illegal.

On the other hand this petitioner insists that if the payment be not illegal (and this petitioner respectfully insists that it is not illegal) that it is the duty of the court to decide the question.

6. This defendant respectfully insists that the court by its decision has necessarily restricted the jurisdiction of the court far beyond the jurisdiction conferred upon it by the act.

7. This petitioner respectfully submits (as appears from the brief and argument of this petitioner) that the question which the court has failed to decide in this cause is a question of transcendent importance in the case and that it is the only proceeding wherein the legality of the payment complained of can be decided except in a criminal proceeding.

203 For each and every of the foregoing reasons, this petitioner respectfully petitions the court to grant a re-argument upon the point above outlined, and this your petitioner will ever pray.

Respectfully submitted.

UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO,
By R. M. SHAW,
Its Solicitor.

204 *Journal entry.*

Proceedings of Nov. 28, 1911.

UNITED STATES EX REL. ATTORNEY GENERAL, PETITIONER,
vs.
UNION STOCK YARD & TRANSIT CO. OF CHICAGO ET AL.,
respondents. } No. 15.

This cause now coming on to be heard on motion of the defendants for a re-argument of certain questions specified in their petition filed herein, it is hereby ordered that the said motion be and is hereby allowed, and the cause set for re-argument on the said points for the 6th day of December, 1911.

205 *Journal entry.*

Proceedings of Dec. 6, 1911.

UNITED STATES EX REL. ATTORNEY GENERAL, PETITIONER,
vs.
UNION STOCK YARD & TRANSIT CO. OF CHICAGO ET AL.,
respondents. } No. 15.

Said cause came on for rehearing before the court, and the arguments of counsel were concluded, Mr. Ralph M. Shaw appearing on

behalf of the respondents, Mr. Willard M. McEwen on behalf of Pfaelzer and Sons, and Mr. Blackburn Esterline and Mr. William E. Lamb on behalf of the United States. Thereupon the cause was taken under advisement by the court.

206 *Opinion on rehearing.*

Filed February 13, 1912.

United States Commerce Court.

UNITED STATES EX REL. ATTORNEY GENERAL
v.
UNION STOCK YARD AND TRANSIT CO. ET AL. } No. 15. October session, 1911.

On petition for rehearing.

Mr. Blackburn Esterline and Mr. William E. Lamb, special assistants to the Attorney General, for the United States.

Mr. Ralph M. Shaw for Union Stock Yard and Transit Co. of Chicago and for the Chicago Junction Railway Company.

Mr. Willard M. McEwen for Louis Pfaelzer & Sons.

Before Knapp, presiding judge, and Archbald, Hunt, Carland, and Mack, judges.

[February 13, 1912.]

MACK, *Judge*.

It is urged that this court, in the opinion heretofore filed, has too narrowly limited its jurisdiction in declining to consider
207 whether or not the proposed payment by the Stock Yards Company to the Pfaelzers is a rebate or discrimination forbidden by law.

Counsel contend that inasmuch as the Junction Co., which is alleged and has been found by us to be a common carrier engaged in interstate commerce, is one of the defendants, therefore, under section 2, as well as under section 3, of the Elkins Act, other parties not common carriers involved in the subject matter of the proceedings may likewise be proceeded against in the same action.

But, as we stated in the former opinion, two entirely separate cases have been joined in this proceeding, the one against the Junction Co. and the Stock Yards Co. to compel compliance with sections 6 and 20 of the act to regulate commerce; the other against the Stock Yards Co., the Investment Co., and the Pfaelzers, under the Elkins Act, to enjoin an alleged discrimination and rebate.

While we have not of our own motion dismissed the petition for misjoinder of actions and multifariousness, nevertheless we can not

deal with the case otherwise than as involving the two distinct causes of action. The fact that the Junction Co. is a party to the first of these does not make it also a party to the second. No relief of any kind is prayed for against it in respect to the alleged discrimination and rebate. If, as we interpret sections two and three of the Elkins Act, a proceeding thereunder in equity can not be maintained
208 against parties other than a common carrier engaged in interstate commerce, unless on proper allegations relief is also sought against the commission by such a carrier of one or more of the acts therein prohibited, the fact that the Junction Co., which is such a carrier, is a party defendant on the other branch of the case furnishes no basis for this proceeding against the other defendants.

But counsel further urge that, inasmuch as the Stock Yards Co. is, in good faith, alleged to be an interstate common carrier, this court not only has jurisdiction but is in duty bound to determine the legality of the contract with the Pfaelzers.

There is no question as to the jurisdiction of the court in the premises; the petition purports to state a case under the Elkins Act. If the defendants had admitted that the Stock Yards Co. was an interstate common carrier, the only question to be determined by this court would have been the legality of the contract. But when the defendants denied this allegation, they raised an issue of fact the determination of which necessarily preceded any consideration of the issue of law. When that issue of fact was decided in their favor the petition had to be dismissed.

The court nevertheless had the power and the right to base its decision on either or both of two possible grounds, and if we had been clearly of the opinion that such a contract as the one in
209 question, made by an interstate common carrier, were legal, the petition would have been dismissed on both grounds.

The only case stated, or that could properly have been stated in the petition, was one charging that an interstate carrier had made a contract in violation of the law. Defendants, however, are now asking us to decide a totally different question—whether or not such a contract made by one not a carrier is legal. However important it may be to them to secure an authoritative ruling thereon, any answer that we might give would not be responsive to the issues raised in the case before us, and would, therefore, be a mere dictum, and of no binding force.

No authority has been vested in this court to advise parties, on their application, whether proposed undertakings would, if consummated, violate the law, or, on the application of the Government, to enjoin the commission of alleged illegal acts, except only when such an injunction is sought against an interstate common carrier.

An order will therefore be entered in accordance with the original opinion filed herein.

210 *Final decree.*

Entered March 8, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, petitioner,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership, doing business under the firm name and style of Louis Pfaelzer & Sons; and Louis Pfaelzer & Sons, a corporation, successor to said copartnership, respondents.

No. 15. October session, 1911.

Final decree.

This cause having been transferred to the United States Commerce Court from the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois, came on for hearing on the petition filed by the petitioner in said Circuit Court as amended on the face thereof, the answer of Union Stock Yard and Transit Company of Chicago, a corporation; the answer of the Chicago Junction Railway Company, a corporation; the answer of the Chicago Junction Railways and Union Stock Yards Company, a corporation; and the secondly amended joint and several answer of David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership, doing business under the firm name and style of Louis Pfaelzer and Sons, which answer was ordered to stand also as the answer of Louis Pfaelzer and Sons, a corporation, successor to said copartnership, and the record and proceedings in said cause, and the same was argued by counsel and submitted to the court—

211 Upon consideration whereof, and the court having made and filed its opinion, it is now by the court ordered, adjudged, and decreed—

First. That the Chicago Junction Railway Company, a corporation, is a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

Second. That the Chicago Junction Railway Company, a corporation, as a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the

acts amendatory thereof and supplementary thereto, file with the Interstate Commerce Commission within sixty days from the date hereof such schedules and tariffs of rates, fares, and charges as may be lawful and proper and otherwise comply with the provisions of section 6 of the said act to regulate commerce.

Third. That the relief prayed for in the petition against the Chicago Junction Railway Company, requiring it, as a common carrier, engaged in commerce among the several States, to comply with section 20 of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and to file such reports and statements as may be required under the rules and regulations adopted by the Interstate Commerce Commission in conformity with the provisions of said section 20, be, and the same is hereby, denied.

Fourth. That the Union Stock Yard and Transit Company, a corporation, respondent, is not a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof and supplementary thereto, and that the said petition be, and the same is hereby, dismissed as to it.

212 Fifth. That the said petition be and the same is hereby dismissed as to the respondent the Chicago Junction Railways and Union Stock Yards Company.

Sixth. That the said petition be, and the same is hereby, dismissed as to the respondents, David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons and Louis Pfaelzer and Sons, a corporation, successor to said copartnership.

Seventh. That the contract and guaranty between respondents, David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, and the respondents Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railways and Union Stock Yards Company is not a subject or transaction over which this court has jurisdiction to hear and determine as a violation of the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or of any of them.

By the court.

MARTIN A. KNAPP,
Presiding judge.

To the entry of which said decree (except the first and second parts thereof) the United States, by its counsel, objects and excepts.

To the entry of which said decree the defendant, Chicago Junction Railway, objects and excepts.

213 *Petition for appeal of United States.*

Filed March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission, petitioner,

v.

UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, respondents. } No. 15.

Petition for appeal.

The United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, feeling itself aggrieved by the final order or decree of the Commerce Court, entered March 8, 1912, by its Attorney General, prays an appeal to the Supreme Court of the United States from all of the said final order or decree—

Except so much and such parts thereof as adjudge—

First. That the Chicago Junction Railway Company, a corporation, is a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

Second. That the Chicago Junction Railway Company, a corporation, as a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, file with the Interstate Commerce Commission within sixty days from the
214 date hereof such schedules and tariffs of rates, fares, and charges as may be lawful and proper and otherwise comply with the provisions of section 6 of the said act to regulate commerce.

Third. That the relief prayed for in the petition against the Chicago Junction Railway Company, requiring it, as a common carrier engaged in commerce among the several States, to comply with section 20 of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and to file such reports and statements as may be required under the rules and regulations adopted by the Interstate Commerce Commission in conformity with the provisions of said section 20, be and the same is hereby denied.

The particulars wherein the United States considers said final order or decree erroneous are set forth in the assignment of errors on file, to which reference is made.

And the United States prays that a transcript of the record, proceedings, and papers on which the said order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

GEORGE W. WICKERSHAM,
Attorney General of the United States.

215 *Assignment of errors by United States.*

Filed March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, petitioner,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, respondents. } No. 15.

Assignment of errors.

Comes now the United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, by its Attorney General, and in connection with its petition for appeal, files the following assignment of errors on which it will rely upon said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court entered against it March 8, 1912, in the above-entitled cause.

The Commerce Court erred—

I.

In holding and adjudging that the Union Stock Yard and Transit Company, a corporation, is not a common carrier subject to the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

II.

In not holding and adjudging that the Union Stock Yard and Transit Company is a common carrier by railroad and subject to the provisions of an act entitled "An act to regulate commerce," approved

February 4, 1887, and the acts amendatory thereof and
216 supplementary thereto, and in not ordering it to comply with the same.

III.

In holding and adjudging that the Commerce Court is without jurisdiction over the Union Stock Yard and Transit Company, a corporation, under the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto and in dismissing the petition as to the said Union Stock Yard and Transit Company.

IV.

In holding and adjudging that the Commerce Court is without jurisdiction over the Chicago Junction Railways and Union Stock Yards Company and in dismissing the petition as to it.

V.

In holding and adjudging that the Commerce Court is without jurisdiction over David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons, and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, and in dismissing the petition as to them and each of them.

VI.

In holding and adjudging that the contract and guaranty between David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership, doing business under the firm name and style of Louis Pfaelzer and Sons, and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, and the Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railways and Union Stock Yards Company is not a subject or transaction over which the court has jurisdiction to hear and determine as a violation of the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto or of any of them.

217 VII.

In holding that the Union Stock Yard and Transit Company of Chicago was not a joint operator of the railroad with the Chicago Junction Railway Company under the agreement between them.

VIII.

In not holding that the payment of the amount of money to Louis Pfaelzer and Sons in accordance with the terms of the contract and guaranty will constitute, in effect, a rebate and an unlawful discrimination and will, in effect, constitute a device whereby an undue advantage will be given to and an unlawful discrimination will be prac-

*

ticed in favor of said Louis Pfaelzer and Sons by the said Union Stock Yard and Transit Company in the transportation of the property of Louis Pfaelzer and Sons in interstate commerce, and will, in fact, also constitute a concession, rebate, and an unlawful discrimination, whereby the property of the said Louis Pfaelzer and Sons is by device transported in interstate commerce at less charges than are exacted from other shippers for the same service between the same points and at less than the tariff charges thereto, in violation of the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

IX.

In not enjoining and prohibiting the execution and performance of the contract and guaranty between Louis Pfaelzer and Sons and Union Stock Yard and Transit Company of Chicago and Chicago Junction Railways and Union Stock Yards Company as a violation of the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

Wherefore the United States prays that the said final order or decree of the Commerce Court, entered March 8, 1912, be corrected and modified.

GEORGE W. WICKERSHAM,
Attorney General of the United States.

218 *Order allowing appeal of United States.*

Entered March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission, petitioner,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, respondents. | No. 15.

Order allowing appeal.

In the above-entitled cause the United States of America, upon the application of the Attorney General, at the request of the Interstate

Commerce Commission, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered March 8, 1912, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is hereby ordered, adjudged, and decreed that the said appeal be, and the same is hereby, allowed as prayed and made returnable on the 8th day of April, 1912, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which the said order or decree was made and entered to the Supreme Court of the United States.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

219 *Petition for appeal of the Chicago Junction Railway Company.*

Filed March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission,
v.
THE UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation, et al. } No. 15.

Petition for appeal.

The Chicago Junction Railway Company, respondent, feeling itself aggrieved by the final decree entered in the above-entitled cause on the 8th day of March, A. D. 1912, by its counsel prays an appeal to the Supreme Court of the United States from said final decree. The particulars wherein the Chicago Junction Railway Company considers said final decree erroneous are set forth in the assignment of errors herewith filed, to which refers is hereby made.

And the said Chicago Junction Railway Company further prays that a transcript of the record, proceedings, and papers on which said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Washington, D. C., March 9th, 1912.

RALPH W. SHAW,
Solicitor for the Chicago Junction Railway Company.

220 *Assignment of errors of the Chicago Junction Railway Company.*

Filed March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission.
vs.
THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation, et al. } No. 15.

Assignment of errors.

Comes now the Chicago Junction Railway Company, a corporation, by its counsel, and in connection with its application for appeal files the following assignment of errors on which it will rely upon said appeal to the Supreme Court of the United States from the final order or decree of the United States Commerce Court entered on the 8th day of March, A. D. 1912, in the above-entitled cause:

1. The court erred in ordering, adjudging, and decreeing that the Chicago Junction Railway Company is a common carrier, subject to the provisions of an act entitled "An act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto."

2. The court erred in ordering, adjudging, and decreeing the Chicago Junction Railway Company to file with the Interstate Commerce Commission within sixty (60) days from the date of the entry of the decree, its schedules and tariffs of rates, fares, and charges.

3. The court erred in ordering, adjudging, and decreeing the Chicago Junction Railway Company to otherwise comply with the
221 provisions of section 6 of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

4. The court erred in that it did not find, order, adjudge, and decree that the defendant, the Chicago Junction Railway Company, is not a common carrier subject to the provisions of the act entitled "An act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto."

5. The court erred in that it did not find, order, adjudge, and decree that the petition of the United States upon the application of the Attorney General, at the request of the Interstate Commerce Commission, be dismissed.

RALPH M. SHAW,
Solicitor for defendant, Chicago Junction Railway Company.

222 *Order allowing appeal of the Chicago Junction Railway Company.*

Entered March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission,
v.
THE UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation, et al. } No. 15.

Order.

In the above entitled cause, the Chicago Junction Railway Company having made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree of the United States Commerce Court entered the 8th day of March, 1912, and having at the same time made and filed an assignment of errors, and having in all respects conformed to the statutes and the rules of court in such case made and provided, it is ordered and decreed that the said appeal be, and the same is hereby, allowed as prayed and made returnable on the 8th day of April, 1912, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers to the Supreme Court of the United States.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

MARCH 9, 1912.

223 *Præcipe for record.*

Filed March 27, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Inter-State Commerce Commission, petitioner,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; the Chicago Junction Railway Company, a corporation; the Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, respondents. } No. 15.

Præcipe for record.

To the clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeals from the final order or decree of the Commerce Court entered March 8, 1912, and include in said transcript the following pleadings, proceedings, and papers on file or of record, to wit:

Petition and exhibits.

Chancery subpœna.

Appearance of David Pfaelzer et al.

Appearance of Chicago Junction Railways and Union Stock Yards Company.

Appearance of Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railway Company.

Answer of Union Stock Yard and Transit Company.

Answer of Chicago Junction Railway Company.

224 Answer of Chicago Junction Railways and Union Stock Yards Company.

Joint answer of David Pfaelzer et al.

Amended joint answer of David Pfaelzer et al.

Certificate of the Attorney General.

Order transferring cause to Commerce Court.

Order granting leave to Pfaelzer et al. to amend answer.

Second amendment of joint answer of Pfaelzer et al.

Secondly amended joint and several answer of Pfaelzer et al.

Appearance of Louis Pfaelzer & Sons, a corporation, and order that answer of Pfaelzer et al. stand as answer of the corporation.

Opinion of Commerce Court.

Petition for reargument and order setting cause for reargument.

Opinion on reargument.

Final decree.

Petition for appeal by United States, assignment of errors and order allowing appeal.

Petition for appeal by Chicago Junction Railway Company, assignment of errors and order allowing appeal.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General,
For the United States.

RALPH M. SHAW,
Solicitor for C. J. Ry. Co.; U. S. Y. & T. Co.;
and C. J. Ry. and U. S. Y. Co.

WILLARD M. MCEWEN,
Solicitor for Pfaelzer et al. and Louis
Pfaelzer & Sons, a Corporation.

225 United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE application of the Attorney General, at the request of the Interstate Commerce Commission, petitioners,

vs.

UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, respondents.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 224, inclusive) to be a true and complete transcript of the proceedings had of record in the above entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 8th day of April, A. D. 1912.

[SEAL.] G. F. SNYDER,
Clerk.

226 *Citation on appeal.*

UNITED STATES OF AMERICA, *ss:*

To Union Stock Yard and Transit Company of Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, is

appellant and you are appellees, to show cause, if any there be, why the final order or decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 9th day of March, 1912.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 19th day of March, 1912.

RALPH M. SHAW,
Solicitor for Union Stock Yard and Transit Company of Chicago, The Chicago Junction Railway Company, and The Chicago Junction Railways and Union Stock Yards Company.

WILLARD M. MCEWEN,
Solicitor for David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, and Louis Pfaelzer & Sons, a corporation.

227 In the United States Commerce Court.

(Stamped:) Filed Mar. 12, 1912. United States Commerce Court. G. F. Snyder, Clerk.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission,
v.
THE UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation, et al. } No. 15.

Citation.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court wherein the Chicago Junction Railway Company is appellant, and the United States, upon the relation of the Attorney General, at the request of the Interstate Commerce Commission, is appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to parties in that behalf.

Witness, the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 9th day of March, A. D. 1912.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

228 Service of a copy of the within citation is hereby admitted this 11th day of March, A. D. 1912.

WINFRED T. DENISON,
Acting Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

229 (Indorsed:) No. ——. In the United States Commerce Court. The United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, v. The Union Stock Yard and Transit Company of Chicago, a corporation, et al. Citation.

(Indorsement on cover:) File No. 23173. United States Commerce Court. Term No., 621. The United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, appellant, vs. Union Stock Yard and Transit Company of Chicago et al. File No. 23174. Term No., 622. The Chicago Junction Railway Company, appellant, vs. The United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission. Filed April 22d, 1912. File Nos., 23173 and 23174.

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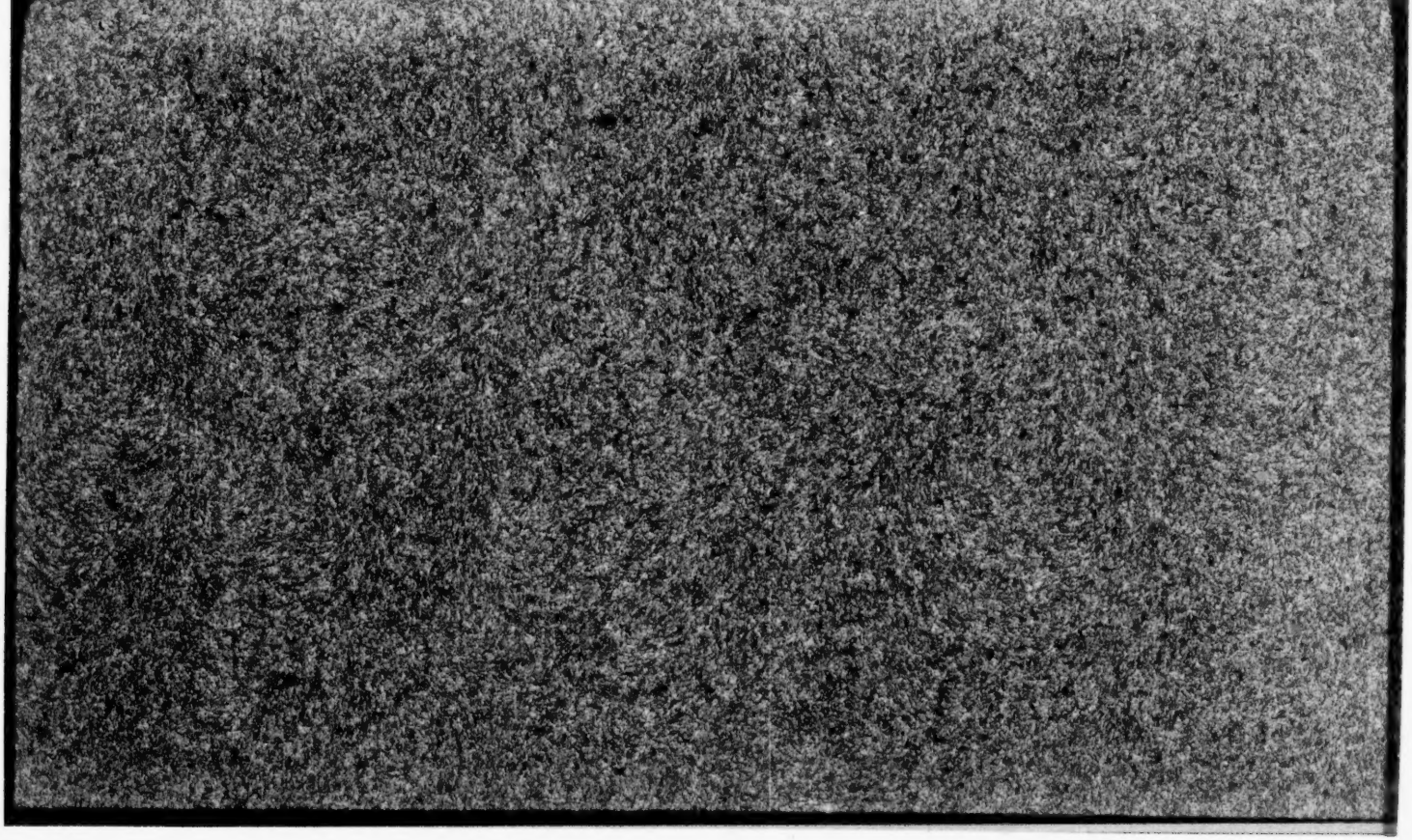

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES OF AMERICA, UPON the application of the Attorney General, at the request of the Interstate Commerce Commission, appellant, *v.* UNION STOCK YARD & TRANSIT COMPANY of Chicago, the Chicago Junction Railway Company, the Chicago Junction Railways and Union Stock Yards Company, and Louis Pfaelzer & Sons.	No. 1097.
CHICAGO JUNCTION RAILWAY COMPANY, appellant, *v.* THE UNITED STATES OF AMERICA, UPON the application of the Attorney General, at the request of the Interstate Commerce Commission.	No. 1098.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

MOTION TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and moves the court to advance the above-entitled causes for hearing.

41146—12

The appeals are from a final order or decree of the Commerce Court entered March 8, 1912.

The following questions, among others, are involved:

1. Whether the Chicago Junction Railway Company, a corporation organized under the general railroad act of the State of Illinois, and operating a line of railroad located wholly within the city of Chicago, and engaged in the switching and handling of loaded and empty cars from the western trunk lines terminating at Chicago to the eastern trunk lines, and from the eastern trunk lines terminating at Chicago to the western trunk lines, said cars moving in interstate commerce; and in the receiving, delivering, handling, and switching of cars and freight, originating at points located on its line, or destined to points located on its line, to and from the said trunk lines, is a common carrier engaged in commerce among the several States and subject to the act to regulate commerce.

2. Whether the Union Stock Yard and Transit Company of Chicago, a corporation organized under a special act of the Legislature of the State of Illinois, for the purpose of conducting a stock-yard business, and a hotel business, and of owning and operating a railroad, which said railroad and equipment has, by agreement, been turned over to the Chicago Junction Railway Company to operate, the Stock Yard Company receiving two-thirds of the net earnings and having access to the books of the Junction Company through a single auditor for both companies, is a

common carrier engaged in commerce among the several States and subject to the act to regulate commerce.

3. Whether, by reason of the ownership of all of the capital stock of the Chicago Junction Railway Company and 90 per cent of the capital stock of the Union Stock Yard and Transit Company of Chicago, the Chicago Junction Railways and Union Stock Yards Company, organized for the purpose of holding the stocks of the two companies named, and which controls the boards of directors of the said two companies named, and the greater part of whose income is derived from dividends paid to it upon the shares of the stocks so owned, there is such an identity of ownership, management, and control of a railroad as to subject said three companies to regulation as common carriers engaged in commerce among the several States under the act to regulate commerce.

4. Whether or not a certain transaction wherein the Union Stock Yard and Transit Company agrees to pay $50,000 to Louis Pfaelzer and Sons, a corporation, engaged in the slaughtering of live stock and the selling of the products thereof, in consideration that the said Louis Pfaelzer and Sons will construct and maintain for a certain specified time a packing plant within the Union Stock Yards on the line of said railroad, constitutes a concession, rebate, or unlawful discrimination, whereby the property of said Louis Pfaelzer and Sons is by device transported in interstate commerce at less charges than are collected from and paid by other shippers

for the same service between the same points and at less than the tariff charges, within the meaning of the act to regulate commerce, or certain provisions thereof.

5. Whether the Commerce Court has jurisdiction to hear and determine the question herein last above referred to.

Public interests are involved and the priority suggested is authorized by section 2 of the act of June 18, 1910 (36 Stat. 539, 542).

Opposing counsel concur in the motion to advance.

F. W. LEHMANN,
Solicitor General.

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STIPULATION AS TO FACTS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

Office Supreme Court, U. S.
FILED.
OCT 21 1912
JAMES H. McKENN

No. 621.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

UNION STOCK YARD & TRANSIT COMPANY OF CHICAGO ET AL.

No. 622.

THE CHICAGO JUNCTION RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

STIPULATION FILED OCTOBER 21, 1912.

(23173 AND 23174.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1912.

No. 621.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION, APPELLANT.

vs.

UNION STOCK YARD & TRANSIT COMPANY OF CHICAGO ET AL.

No. 622.

THE CHICAGO JUNCTION RAILWAY COMPANY, APPELLANT.

vs.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

In the Supreme Court of the United States, October Term, A. D. 1912.

UNITED STATES OF AMERICA ET AL., APPELLANT. *v.* UNION STOCK YARD & TRANSIT COMPANY ET AL., APPELLEES.	No. 621.
CHICAGO JUNCTION RAILWAY COMPANY, APPELLANT. *v.* UNITED STATES OF AMERICA, APPELLEE.	No. 622.

63692—12

Stipulation.

Prior to the year 1907, at which time the Junction Company divested itself of the ownership of that portion of its line of railroad operated by it in the State of Indiana, it had filed its tariffs with the Interstate Commerce Commission. On December 1st, 1907, being the date of the sale of that portion of its railroad running into Indiana, it legally cancelled said tariffs.

It was believed at the time the issues were joined in these cases by both the Government and the Junction Company that there were then no tariffs on file with the Interstate Commerce Commission of the Junction Company, which had not been cancelled, and the allegations of the bill and the answer of the Junction Company were based upon that belief.

Just prior to the hearing of these cases in the Commerce Court it was discovered that some tariffs of the Michigan Central Railroad Company on file with the commission, to which the Junction Company had attached its concurrence, had not been cancelled. At the time the Junction Company thought it had cancelled all tariffs on file with the commission, to wit, on December 1st, 1907.

The Junction Company in cancelling its tariffs had directed the cancellation of all tariffs to which it was a party, but the officer of the Junction Company having charge of the same through inadvertance failed to cancel the Junction Company's concurrence in said tariffs with the Michigan Central Railroad Company, and the latter tariffs were in effect at the time these cases were heard in the Commerce Court.

These facts were stated to the court verbally during the argument of these cases in the Commerce Court, coupled with the verbal agreement that if in the opinion of the judges they had any material bearing in the decision of this case, the court might consider them as being true.

The Government and the Junction Company desiring to acquaint this court with the actual facts in relation to such tariffs hereby agree, subject to the approval of this court, that if such facts, in the judgment of this court, are of any material importance in the decision of these cases, or any issue therein, they may be considered by the court as fully as if they were contained in the printed record filed herein.

WILLIAM E. LAMB,
Special Asst. to the Atty. General.
RALPH M. SHAW,
Solicitor for Chicago Junction Railway Company.
JESSE C. ADKINS,
Assistant Attorney General.

(Indorsed:) Nos. 621 and 622. In the Supreme Court of the United States. United States of America et al., appellant, v. Union

Stock Yard & Transit Company et al., appellee. Chicago Junction Railway Company, appellant, v. United States of America, appellee. Stipulation.

(Indorsement on cover:) File Nos. 23,173 & 23,174. Supreme Court U. S. October term, 1912. Term Nos. 621 & 622. The United States of America, upon the application of the *application of the* Attorney General, at the request of the Interstate Com. Comm'n, appellant, vs. Union Stock Yard & Transit Co. of Chicago et al. The Chicago Junction Ry. Co., appellant, vs. The United States of America upon the application of the Attorney General, at the request of the Interstate Com. Comm'n. Stipulation as to facts. Filed October 21, 1912.

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FILED.
OCT 8 1912
JAMES H. McKENN

Nos. 621, 622.

In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

v.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, A CORPORATION; THE CHICAGO JUNCTION RAILWAY COMPANY, A CORPORATION; THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY, A CORPORATION; DAVID PFAELZER, ABE PFAELZER, AND JONES L. PFAELZER, A COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF LOUIS PFAELZER SONS, APPELLEES.

CHICAGO JUNCTION RAILWAY COMPANY, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE.

BRIEF FOR THE UNITED STATES.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1912

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In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

THE UNITED STATES OF AMERICA, UPON the application of the Attorney General, at the request of the Interstate Commerce Commission, appellant,

v.

THE UNION STOCK YARD AND TRANSIT Company of Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, appellees. } No. 621.

CHICAGO JUNCTION RAILWAY COMPANY, appellant,

v.

UNITED STATES OF AMERICA, APPELLEE. } No. 622.

STATEMENT.

In case No. 621 the United States, complainant or petitioner in the Commerce Court, appeals from the decree of that court dismissing its bill against the

Union Stock Yard and Transit Company of Chicago, a corporation; the Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the name of Louis Pfaelzer & Sons, subsequently incorporated under the same name.

The Chicago Junction Railway Company was a party defendant to the bill, and the relief prayed against it was granted, from which decree that company has appealed in case 622. The two cases are therefore cross appeals from the same decree of the Commerce Court.

The argument for the United States in both cases will be presented in one brief, and in order to avoid confusion the defendants to the bill will be so called here. Throughout the pleadings the Union Stock Yard and Transit Company of Chicago was called the Stock Yard Company; the Chicago Junction Railway Company was called the Junction Company, and the Chicago Junction Railways and Union Stock Yards Company was called the Investment Company, and these short names will be hereafter used.

The bill sought to enjoin violations of sections 2, 3, and 6 of the interstate commerce act (36 Stat., 544) and of section 1 of the Elkins law (34 Stat., 587).

It averred that the Stock Yard Company and the Junction Company were common carriers engaged in interstate commerce, but that they had neglected to file with the commission their tariffs as required by section 6 of the commerce act; that the Stock

Yard Company had entered into a contract with the Pfaelzers (which contract was guaranteed by the Investment Company) to pay to the Pfaelzers $50,000 on condition that they erect a packing plant of a certain capacity adjacent to the Stock Yards and to operate the same for fifteen years and to cause all cattle slaughtered by them to move through the stock yards; and that such payment would constitute a rebate concession and unjust discrimination within the meaning of both the commerce law and the Elkins act. The bill then prayed for an injunction to restrain the Stock Yard Company and the Junction Company from further engaging in such commerce until they filed tariffs, as required by section 6 of the commerce act, and also to restrain the performance of the contract with the Pfaelzers. The case was heard upon the bill and the answers of the defendants.

The Commerce Court held that the Junction Company was a common carrier subject to the interstate commerce acts and ordered it to file tariffs of its charges as required by said section 6. (R., 120.)

The court further held that the Stock Yard Company was not a common carrier, and that therefore it had no jurisdiction to determine whether the payment as contracted for would be a rebate, and the bill was therefore dismissed as to all the defendants except the Junction Company. (R., 121.)

Judge Archbald dissented in part, being of opinion that the bill should have been dismissed *in toto*. (Rec., 99–111.)

61665—12—2

The Stock Yard Company was incorporated by special act of the Illinois Legislature of February 13, 1865, and was endowed with the usual prerogatives of a stock-yards company and with the right to build and operate a railroad. (Rec., 22–27.)

The Stock Yard Company thereupon acquired some 800 acres of land in Chicago, on which it established its yard and built a hotel and railroad. Nearly 300 miles of track were built, connecting all the roads entering Chicago (and which will be hereafter called the trunk lines) with the stock yard, where a stock market was maintained (Rec., 7–8). The tracks were used as a connecting link between the eastern and western lines, over which through interstate traffic was hauled by the Stock Yard Company. Upon the tracks have been established some 650 industries, and all kinds of freight were hauled by the Stock Yard Company direct to and from these industries (Rec., 8). By far the greater part of the freight arriving at the stock yards came by continuous shipment from States other than Illinois, and the greater part of that originating at Chicago moved in continuous shipment to other States. That company also maintained a freight depot called Union Freight Station (Rec., 10). Here all dead freight in less than carload lots was received for distribution and delivery to the consignees in the case of incoming freight, and for shipment in the case of outgoing freight.

In carrying out these activities, the Stock Yard Company owned its own locomotives and other rolling

stock, and employed its own engineers and train crews and train despatchers. (Rec., 23–61.)

For handling live freight, the Stock Yard Company had the usual loading and unloading chutes, platforms, pens, etc. In the case of cattle, the trunk line hauled the loaded cars to the proper chute, where the loading and unloading was done by the Stock Yards Company. Outgoing live stock were received, loaded, and hauled by the Stock Yard Company to the trunk line. (Rec., 12–61.)

Regular charges were made by the Stock Yard Company for its multitudinous services, some of which were set forth in the tariffs filed by the trunk lines, but those tariffs were not joined in by the Stock Yard Company nor did that company file any tariffs of its own with the commission. (Rec. 14–23, 62.)

By agreement of December 15, 1897, the Stock Yard Company turned over all its rolling stock and the operation of its tracks to the predecessors in interest of the Junction Company, which agreed to pay under the designation of rental two-thirds of the net profits derived from the operation of those tracks and all other tracks then owned or thereafter acquired (R., 32, 35).

The only effect of the agreement was to divide the activities of the Stock Yard Company between it and the Junction Company, the latter company doing all the actual hauling, while the former continued to receive and load and to unload and deliver all live stock and to transfer the same in transit on through shipments.

The Investment Company was organized in 1890 under the laws of New Jersey for the express purpose of acquiring and holding the shares of the Stock Yard Company. It immediately acquired over 90 per cent of such stock, as well as all the stock of the Junction Company, except a few shares necessary to qualify directors. (R., 80.)

Pfaelzer & Sons are packers and shippers, whose establishment was on the railroad of the Stock Yard Company. Their live stock is either purchased at or delivered through the Stock Yard; this freight is practically all interstate. The Pfaelzers during the last five years have paid at least $2,800 annually in charges on such freight (R., 96).

The Pfaelzer plant was condemned by the Department of Agriculture, and the owners were under the necessity of rebuilding. They considered the advisability of removing to Kansas City, and in their answer aver that they could have gotten a large bonus from the Kansas City, Missouri, Stock Yards. Thereupon the Stock Yard entered into a contract to pay them $50,000 provided they would erect a packing plant on the line of the Stock Yard Company and maintain and operate the same for a period of 15 years and buy and use in their slaughtering business only such live stock as had moved into the Stock Yards, and if not so bought to pay the regular charges thereon as if the same had moved into the Stock Yards and had there been purchased by them; which contract was guaranteed by the Investment Company. (Rec., 37–41.)

Upon these facts the prayer of the bill is that the Stock Yard Company and the Junction Company be adjudged to be common carriers engaged in interstate commerce and that they be restrained from further engaging in such commerce until they file tariffs with the commission in accordance with section 6 of the commerce act; and that the Stock Yard Company and the Investment Company be restrained from paying and the Pfaelzers be restrained from receiving any money under said contract.

Inasmuch as the first question in the case is whether the Stock Yard Company and the Junction Company are common carriers engaged in interstate commerce, a more detailed statement of their history and activities is proper.

It is more intelligible to state the functions and activities of the Stock Yard Company and Junction Company together; and in fact the contention of the United States is that notwithstanding the operating agreement of December, 1897, the two corporations are in fact but one system, as above set forth.

ORGANIZATION OF THE STOCK YARD COMPANY.

Under the act of 1865, the Stock Yard Company is given the right to locate near the southerly limits of Chicago "all necessary yards, enclosures, buildings, structures, railway lines, tracks, switches and turnouts, aqueducts, for the reception, safekeeping, feeding, and watering, and for the weighing, delivery, and transfer of cattle and live stock of every description." (R., 23.)

By section 3 of the act the Stock Yard Company was authorized to construct a railway so as to connect its yard with the tracks of all railroads terminating in Chicago, with authority to change and reconstruct its road, and it was provided that the company—

> shall have the power and authority to * * * transport and allow to be transported thereon between said railroads and cattle yards, all cattle and live stock and persons accompanying the same to and from said yards, and may also transport and allow to be transported between the railroads entering said city, and so connected by the road or roads hereby authorized, by steam or other power, freight and property of every kind as well as stock and cattle, and may fix and establish, take and receive, such rates of toll for all freight and property so transported between said several railroads as the directors shall, from time to time, establish:
>
> Provided, all fees and charges for freights, hotel bills, feeding, carrying, and everything done by reason of the powers herein given, shall be subject to any general law that may be passed by the legislature of this State, in reference to stock yards or railroads (R., 23, 24).

By section 4, the corporation was authorized, for the purpose of obtaining lands necessary for its railroad tracks, to acquire the same by condemnation, under the provisions of the act of June 22, 1852 (R., 24, 25). This act, which is found in the General Laws of Illinois of the 17th General Assembly, 1851,

1852, authorizes public roads, railroads, plank roads, turnpike roads, canals or other public works to condemn land for their right of way.

Section 11 provided that nothing in the act should be construed as conferring upon the company the power to maintain a railroad for the conveyance of passengers or freight *in the city of Chicago* (R., 26).

The Stock Yard Company constructed and established its stock yards, which cover about 550 acres of land, and used for other corporate purposes about 250 acres in the same vicinity. Some of this land was acquired by purchase and some by condemnation (R., 3, 4). A hotel was also erected as authorized by the charter, and has since been continuously operated (R., 4).

Tracks.—The Stock Yard Company built and owns about 300 miles of track. The main tracks run from a point on the lake front near the intersection of 39th Street and the tracks of the Illinois Central Railroad Company to another point in Illinois about 8¼ miles distant; there are about 40 miles of main tracks and about 250 miles of other tracks leading to industries adjacent to the Stock Yard. Of this about 650 are connected with the Stock Yard track (R., 7, 8, and 57). While these tracks still belong to the Stock Yard Company, since 1897 they have been operated by the Junction Company.

Equipment and employees.—The equipment consists of engines and other rolling stock which are owned by the Stock Yard and operated by the Junction Company. The engineers, brakemen, flagmen, and

train dispatchers are now employed by the Junction Company. (Rec., 4.)

The Stock Yard.—This is situated several miles west of the lake. It covers a large space of ground and in it are built the pens for the reception and keeping of cattle, and the chutes and platforms for loading and unloading. The employees of the Stock Yard Company load and unload all live cattle. (Rec., 5.)

Union Freight Station.—This is near the Stock Yard and is operated for the receipt, distribution, and delivery of dead freight in less than carload lots. It is owned by the Stock Yard Company, but now operated by the Junction Company. (Rec., 10.)

METHOD OF OPERATION.

DEAD FREIGHT. *In carload lots.*—Such freight is delivered by the trunkline to the receiving track of the Stock Yard Company and marked by the former with a transfer card and then hauled by the Junction Company, in the case of through freight, to the connecting line, or in the case of a shipment to one of the industries on the Stock Yard Company tracks direct to that establishment as may be shown by such transfer card. Outgoing freight is handled in the same manner, the shipper notifying the trunk line which is to handle his freight, and that carrier delivering the empty car to the Junction Company, which hauls it to the shipper, and, after loading, hauls it back to the trunk line (R., 8, 9).

In less than carload lots.—For handling such freight the Union Freight Station was established. Outgoing freight is either delivered by the shipper to the Union Station or is hauled by the Junction Company from the shipper to the freight station, where it is assorted and transferred in transit to the cars of the proper trunk lines, and such cars are then hauled to those lines. (R., 10.)

By agreement with the Baltimore & Ohio Railroad, the Junction Company also hauls all B. & O. cars containing freight consigned to the West in less than carload lots, to its Union Station and transfers that freight to other cars, which it hauls to the western line (R., 11).

LIVE STOCK.—Cars of live stock originating at points beyond the State of Illinois are brought to the Stock Yards by the trunk-line carriers and placed at the unloading docks, chutes, or platforms where they are unloaded by the employees of the Stock Yard and delivered by it to the consignees named in the through bills of lading covering the transportation from point of origin to delivery to the consignee (bill, Rec., 4–5; answer, Rec., 47–48).

Shipments of live stock originating at Chicago are received by the Stock Yard from the consignors thereof for shipment, and are by the Stock Yard loaded through its chutes and over its loading docks and platforms into cars alongside thereof, which have been placed there by the Junction Company at the direction of the trunk-line carrier that is to finally

transport such outbound shipments, and the bills of lading issued by the trunk-line carriers cover the transportation from the receipt of the shipment by the Stock Yard from the consignors to the delivery to the consignees at final destination (bill, Rec., 5; answer, Rec., 48). Such loaded cars are hauled by the Junction Company to the trunk line (R., 59).

Shipments of live stock moving through the stock yards to destinations east or west thereof are handled in the following manner:

The trunk lines bring such shipments to Chicago, place the cars at the unloading docks, platforms, and chutes of the Stock Yard, and the latter unloads the live stock, placing the same in its pens, feeds and waters it, and thereafter reloads the said shipments through its chutes and over its loading docks and platforms into the cars of the outgoing trunk-line carrier that is to carry the shipments beyond Chicago. Such unloading, feeding and watering, and reloading are services in transferring in transit (bill, Rec., 6; answer, Rec., 49).

For the services performed by the Stock Yard Company, above set forth, the trunk-line carriers pay the Stock Yard Company a fixed sum per car out of the through rate that covers all transportation services from the receipt of shipment from consignor to final delivery to consignee. Trunk-line carriers publish such through rates, but the Stock Yard Company does not publish its charges, nor does it concur in the

tariffs of the trunk-line carriers, naming the through charges (bill, Rec., 4, 5, 6, and 7; answer, Rec., 46, 47, 48, and 49).

In the case of horses a somewhat different method is pursued. The cars containing the horses are hauled by the trunk line to the receiving tracks of the Stock Yard Company and are removed by the Junction Company to a special track, where they are unloaded by the Stock Yard Company. (R., 11.)

WEIGHING.—The Stock Yard Company maintains a scale for the purpose of weighing outbound freight from the stock yards. (R., 12.)

BILLS OF LADING.

All bills of lading are issued by the trunk lines and are not signed by either the Stock Yard Company or the Junction Company. In the case of live stock the bill of lading has attached a live-stock stub, which is retained by the auditor of the Stock Yard Company and Junction Company upon delivering the bill of lading to the local agent of the trunk line. (Rec., 46–51.)

For freight received by the Junction Company at the Union Freight Station a receipt is given to the shipper in the name of the trunk line over which his shipment moves. The shipper may exchange this receipt for a bill of lading from the trunk line, but in many instances the receipt itself is used as the bill of lading. (R., 10–59.)

TARIFFS.

Neither the Stock Yard Company nor the Junction Company at the time the suit was brought filed any tariff with the Commerce Commission. The trunk lines file their own tariffs and in them are set forth the charges of the Junction Company which the former absorb in the through rates that cover all the service performed by all. (Rec., 58–59.) The tariffs of the Junction Company are published broadcast and are known to all.

From the stipulation of counsel filed in this court, it appears that prior to 1907 the Junction Company did file tariffs with the Commission, but in December of that year, when it sold the part of its line situated in Indiana, it legally canceled said tariffs; however, there were then on file with the Commission some tariffs of the Michigan Central Railroad Company, in which the Junction Company had concurred. At the time of the cancellation of its individual tariffs, the Junction Company directed cancellation of all tariffs in which it had concurred, but its officer in charge of the matter inadvertently failed to cancel the Junction Company's concurrence in the tariffs of the Michigan Central Railroad Company, which were, therefore, in effect at the time this case was heard in the Commerce Court. Counsel on both sides think that this court should be acquainted with this matter, which was verbally called to the Commerce Court.

FREIGHT CHARGES.

The Junction Company, for the use of its tracks by the trunk lines in hauling cattle, whether through or to the Stock Yard, is paid out of the freight rate a certain amount per car. (Rec., 58.)

For hauling such live freight, as well as dead freight, the Junction Company receives from the trunk line as its share of the freight a certain sum per car, where the freight is in carload lots. (Rec., 58.)

When the freight is in less than carload lots, the Junction Company, as its share of the freight, is paid 5 cents per hundred pounds. (Rec., 59.)

The B. & O. also pays to the Junction Company a like amount out of the through freight for its services in hauling the freight to the Union Freight Station, and transferring it in transit. (Rec., 59.)

The Stock Yard Company is paid by the trunk lines as its share of the freight a certain sum per car for receiving and loading and for unloading and delivering live stock, or for transferring the stock in transit, in the case of through freight. (Rec., 4, 5, 6, 7–46–47–48.)

In the case of live stock, the freight of the trunk lines is usually paid by the Stock Yard and collected from the commission dealers twice a week. (R., 14.) In the case of charges accruing on the through transportation of cattle which are rested at the Stock Yards, the Stock Yard charges are collected by the trunk line and remitted to the Stock Yard. (R., 12.)

In the case of less than carload freight shipped from the Union Station, the charges are frequently collected by the Junction Company and turned over to the trunk line. (R., 11.)

Demurrage.—The Junction Company is responsible to the trunk line for cars detained on its tracks beyond a given time, and the Junction Company in turn collects demurrage from the consignors or shippers who keep the cars beyond the free time allowed by its rules. (R., 13.)

TRANSFER TO THE JUNCTION COMPANY.

Pursuant to the agreement mentioned, in 1897 (Rec., 32) the Stock Yard Company turned over to the Chicago and Indiana State Line Railroad Company, a corporation organized under the general railroad laws of the State of Illinois, all of its track and rolling stock. Thereafter the Chicago and Indiana State Line Railroad Company consolidated with another railroad company organized under the general railroad laws of Illinois, known as the Chicago, Hammond and Western Railroad Company, and the name of the consolidated roads was changed to the Chicago Junction Railway Company, and at the time of such consolidation the Junction Company owned and operated, in addition to the tracks of the Stock Yard, a belt railroad running around the city of Chicago. (Rec., 7.)

On November 1, 1907, the Junction Company sold to the East Chicago Belt Railroad Company all of its railroad outside of Cook County, Illinois, and

under that agreement the only railroad retained by it was that built by Stock Yard Company. (Rec., 7.)

SPECIFICATION OF ERRORS.

1. The Commerce Court erred in holding and adjudging that the Stock Yard Company is not a common carrier subject to the acts to regulate commerce.

2. The Commerce Court erred in not requiring the Stock Yard Company to comply with said acts.

3. The Commerce Court erred in dismissing the petition as to the Stock Yard Company.

4. The Commerce Court erred in holding and adjudging that the Investment Company is not subject to the jurisdiction of the Commerce Court and in dismissing the petition as to it.

5. The Commerce Court erred in holding and adjudging that the Pfaelzers were not subject to the jurisdiction of the Commerce Court and in dismissing the petition as to them.

6. The Commerce Court erred in holding and adjudging that the contract between the Pfaelzers, on the one part, and the Stock Yard Company and the Investment Company, on the other part, was not subject to the jurisdiction of the Commerce Court.

7. The Commerce Court erred in holding and adjudging that the Stock Yard Company was not a joint operator of the railway with the Junction Company.

8. The Commerce Court erred in refusing to hold that the payment to the Pfaelzers, in accordance with the contract, would constitute a rebate, concession,

or unlawful discrimination, or a device whereby the property of the said Pfaelzers would be transported in interstate commerce at less charges than would be exacted from other shippers for the same service, between the same points, and at less than the tariff charges.

9. The Commerce Court erred in not enjoining and prohibiting the performance of the said contract.

POINTS AND AUTHORITIES.

I.

The Stock Yard Company and the Junction Company are common carriers engaged in the transportation of property wholly by railroad from one State to another.

1. Both companies are engaged in the transportation of property wholly by railroad from one State to another.

(*a*) Property is in interstate commerce from its delivery to the carrier for shipment into another State until it is there delivered to the consignee.

Coe v. *Erroll*, 116 U. S., 517.
The Daniel Ball, 10 Wall., 557.
Henderson v. *N. Y.*, 92 U. S., 271.
Wabash R. Co. v. *Ill.*, 118 U. S., 557.
Rhodes v. *Iowa*, 170 U. S., 412.
Heyman v. *Southern Ry. Co.*, 203 U. S., 270.

(*b*) The commerce act specifically defines "railroad" and "transportation" to include all property and every instrumentality used, and every step taken in such interstate commerce.

Sec. 1, act of June 29, 1906.

(c) Both companies are engaged in transportation. Their activities are within both the judicial and legislative definitions.

It is immaterial if the distance be short or cars only be hauled.

M. P. Ry. v. *Gwinn Co.*, 55 Kans., 525.

Cars are the subject of carriage.

R. R. Co. v. *R. R. Co.*, 109 Ill., 135.

U. S. v. *C. & N. W. Ry. Co.*, 157 Fed., 619.

A towboat may be engaged in interstate commerce.

Moran v. *New Orleans*, 112 U. S., 69.

(d) Such transportation is wholly by railroad and from one State to another.

I. C. C. v. *C. N. O. & T. P. Ry. Co.*, 162 *U. S.*, *184*.

Southern Pac. Terminal Co. v. *I. C. C.*, 219 U. S., 498.

U. S. v. *Colo. & N. W. R. Co.*, 157 Fed., 321.

Leonard v. *Kansas City, etc., Ry. Co.*, 13 I. C. C., 573.

Standard Oil Co. v. *U. S.*, 179 Fed., 614.

Denver & R. G. R. Co. v. *I. C. C.*, 195 Fed., 968.

2. Both the Stock Yard Company and the Junction Company are common carriers.

(a) Definition of common carriers.

Niagara v. *Cordes*, 21 How., 7, 22.

Redfield on Carriers, etc., ed., 1.

Dwight v. *Brewster*, 1 Pick., 50.

Wiggins Ferry Co. v. *R. R. Co.*, 107 Ill., 450.

Gordon v. *Hutchinson*, 1 W. & S., 285.

Carriers of live stock are common carriers.

Myrick v. *Mich. Cent. R. Co.*, 107 U. S., 106, 5 Enc. Law, 2d ed., 428.

(*b*) Under their charters and by reason of their activities, both corporations come within these definitions.

Each was organized as a railroad company. They can not deny their charters.

Randolph v. *Post*, 93 U. S., 502.
Improvement Co. v. *Slack*, 100 U. S., 648.
Union Trust Co. v. *Randall*, 20 Kans., 515.

Under the Illinois constitution they are common carriers. (Art. 11, sec. 12.)

The Junction Company was conceded to be common carrier.

The properties of both companies are railroads and they are engaged in transportation within definitions of Hepburn Act.

They hold themselves out to the general public to perform these services for hire.

Union Stock Yards Co. v. *U. S.*, 169 Fed., 406.

3. The courts have held stock yards to be common carriers engaged in interstate commerce.

U. S. v. *Union Stock Yards*, 161 Fed., 919; affirmed 169 Fed., 404.
U. S. v. *Sioux City Stock Yards*, 162 Fed., 556.
Belt Ry. Co. v. *U. S.*, 168 Fed., 542.
U. S. v. *Ill. Terminal Ry. Co.*, 168 Fed., 546.
McNamara v. *Wash. Terminal Co.*, 37 App. Cas., D. C., 384.

See also *Covington Stock Yard Company* v. *Keith*, 139, U. S. 128.: *Walker* v. *Keenan*, 73 Fed., 755.

The Stock Yard Company and Junction Company are in reality partners and are but one system in the eyes of the law.

Meehan v. *Valentine*, 145 U. S., 623.

Southern Pac. Terminal Co. v. *I. C. C.*, 219 U. S., 498.

Northern Securities Co. v. *U. S.*, 193 U. S., 197.

U. S. v. *Milwaukee Refrig. Transit Co.*, 142 Fed., 247; 145 Fed. 1007; and

Kendall v. *Klapperthal*, 52 Atl., 92.

II.

The payment under the Pfaelzer contract would constitute a rebate, concession, and unlawful discrimination.

Act to regulate commerce, secs. 2, 3.

Elkins Act, sec. 1.

I. C. C. v. *Reichmann*, 145 Fed., 235.

Thomas v. *U. S.*, 156 Fed., 897.

U. S. v. *Milwaukee Refrig. Transit Co.*, 142 Fed., 247; (S. C.) 145 Fed., 1007.

C. & A. Ry. Co. v. *U. S.*, 156 Fed., 558.

U. S. v. *D., L. & W. R. Co.*, 152 Fed., 269.

A., T. & S. F. Ry. Co. v. *U. S.*, 170 Fed., 250.

Wight v. *U. S.*, 167 U. S., 512; and

N. Y., N. H. & H. R. R. Co. v. *I. C. C.*, 200 U. S., 398.

Armour Packing Co. v. *U. S.*, 209 U. S., 71.

III.

Such payment would, therefore, be unlawful on the part of the Stock Yard Company and the Investment Company, and the receipt thereof would be unlawful on the part of the Pfaelzers.

(See citations above.)

IV.

The Commerce Court had jurisdiction of the bill.

Secs. 2 and 3, Elkins law.
Secs. 2, 3, and 6, Act to Regulate Commerce.

V.

The decree in appeal 621 must be reversed and that in appeal 622 affirmed.

ARGUMENT.

I.

The Stock Yard Company and the Junction Company are common carriers engaged in the transportation of property wholly by railroad from one State to another.

1. *The Stock Yard Company and the Junction Company are engaged in the transportation of property wholly by railroad from one State to another.*

Such transportation is interstate commerce within the definitions of that term given by this court.

In *Coe* v. *Erroll*, 116 U. S., 517, 525, it is said that goods are under the protection of the commerce clause of the Constitution "when actually started in the course of transportation to another State or delivered to a carrier for such transportation."

In *The Daniel Ball* (10 Wall., 557, 565) it is said:

> Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transportation. To the extent in which each agency acts in that transportation it is subject to the regulation of commerce.

In *Henderson* v. *Mayor of New York* (92 U. S., 271) it is said that "the transportation of a passenger from Liverpool to the city of New York is one voyage. It is not completed until the passenger has disembarked at the pier in the latter city."

In *Wabash Railroad Company* v. *Illinois* (118 U. S., 557) a State statute prohibiting a greater charge for a shorter than for a longer haul was held unconstitutional, because it applied to interstate traffic. The distinction is indicated in the statement that if the statute "could be construed to apply exclusively to contracts for a carriage which begins and ends within the State, disconnected from a continuous transportation through or into other States," it would be valid (p. 564).

And at page 572: "Whatever may be the instrumentalities by which this transportation from the one point to another is effected it is but one voyage."

In *Rhodes* v. *Iowa* (170 U. S., 412), intoxicating liquors were shipped into Iowa and unloaded on the station platform. It was held that the act of the station agent in moving the goods from the platform into the warehouse was still interstate commerce. In this and the later case of *Heyman* v. *Southern Railway Company* (203 U. S., 270) it was decided that interstate commerce included the actual delivery of the goods to the consignee.

It is clear, therefore, that goods are in interstate commerce from the moment that they are delivered to the carrier for shipment into another State until they have been delivered to the consignee.

The terms "railroad" and "transportation" as used in the commerce acts have been specifically defined in those acts to include every step within the foregoing definition of interstate commerce.

"Railroad" is defined to include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and all freight depots, yards, and grounds used, or necessary, in the transportation or delivery of any said property. (Sec. 1, Hepburn Act.)

"Transportation" includes all instrumentalities and facilities of shipment or carriage, and all services in connection with the receipt and delivery, transfer in transit, storage, and handling of property transported. (Ib.)

Within these definitions, both judicial and statutory, both the Junction Company and the Stock Yard Company are engaged in the transportation of property wholly by railroad from one State to another. This is apparent from a brief restatement of their activities.

The Junction Company receives all freight originating with the industries on its line and hauls the same over its line to the trunk road; and in less than carload lots transfers the freight in transit at the Union Station. Dead freight, arriving at Chicago, is hauled and delivered by the Junction Company to the consignee, and all through dead freight is hauled by the Junction Company over its main line a distance of several miles from one trunk line to another.

In the case of live freight, the Junction Company hauls a distance of several miles over its link in the interstate route all freight originating at the yards, and in the case of horses arriving at Chicago, the Junction Company hauls the same more than a mile over its line from the cattle chutes to the horse platforms and stables.

The tracks and freight depot of the Junction Company are railroad within the definition of the statute and its services in hauling the freight is transportation.

By agreement between the Stock Yard Company and the various trunk lines, the Stock Yard Company has made its yard the freight depot and terminal yard of the trunk lines for the receipt and delivery of all live freight destined to or originating at Chicago, and such yard is therefore railroad within the statute; the chutes, platforms, and pens are instrumentalities of shipment, and are therefore transportation.

The Stock Yard Company, besides receiving all live stock originating at and destined to Chicago, loads and unloads such stock and transfers the same in transit in the case of shipments passing through Chicago. Such services are transportation within the statute.

The argument that the Junction Company's service is switching and not commerce is answered by the statute, which specifically includes in transportation all services in connection with the receipt and delivery of freight.

This amendment of 1906 is a legislative answer to the early case of *Kentucky, etc., Bridge Co.* v. *Louisville & N. R. R. Co.* (37 Fed., 615), in which it is said that switching is not within the statute.

But the fact is that the Junction Company actually moves freight over its own tracks, and that its charge is based upon the property hauled; in carload lots it receives pay only when the car is loaded, and in less than carload lots its charge is made on the hundred pounds. It is immaterial that the haul is but a few miles—it is still transportation (*M. P. Ry. Co.* v. *Grocery Co.*, 55 Kans., 525.)

Nor is the case affected by comparing the Junction Company to a towboat. Even if the Junction Company hauled only the car and not the freight, cars are the subject of carriage (*P. & P. U. Ry. Co.* v. *C., R. I. & P. Ry. Co.*, 109 Ill., 135; *U. S.* v. *C. & N. W. Ry. Co.*, 157 Fed., 619), and the statute defines cars as transportation. And the tug when towing a vessel engaged in interstate commerce is itself engaged in such commerce (*Moran* v. *New Orleans*, 112 U. S., 69).

From the foregoing it follows that when the services are performed by the Junction Company and the Stock Yard Company and their railroads are used in connection with the transportation of freight moving from one State to another, both the Stock Yard Company and the Junction Company are links in the interstate transportation, and are, therefore, within the commerce laws.

But, it is urged by counsel for the defendants, that they are not within the act as amended in 1906, because their transportation is all within the State of Illinois.

The original commerce act applied to carriers "wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management, or arrangement, for the continuous carriage or shipment," etc., and in the amendment of 1906 all of the foregoing clause after "wholly by railroad," was placed in parentheses.

The original act was applied by this court to a line entirely within a State, which by common arrangement with connecting lines had become a link in the interstate route. (*I. C. C.* v. *C. N. O. & T. P. Ry. Co.*, 162 U. S., 184.)

In *I. C. C.* v. *Bellaire Z. & C. R.* (77 Fed., 942), and *U. S.* v. *Chicago, etc., R. Co.* (81 Fed., 783), the courts, applying what they understood to be the principle of that case, held that the State roads participating in interstate carriage were not amenable to the law, because the evidence did not show a common control, management, or arrangement for continuous shipment.

Counsel now argues that Congress by amending the statute in other particulars and not in this has accepted the construction adopted in the last two cases; but inasmuch as even that construction would leave the defendants subject to the act if a common arrangement be shown, counsel urges, somewhat inconsistently, that the insertion of the parentheses

in the amendment of 1906 did change the statute in this very particular so as to remove from its operation a link in an all-rail route, if the transportation performed by that link is entirely within a single State.

Such a construction would destroy the statute. The great purpose of the commerce act was to place all shippers upon an equality and to compel each to pay the same rate. (*N. Y., N. H. & H. R. R.* v. *I. C. C.*, 200 U. S., 361, 391.) To accomplish this, rebates and preferences were prohibited. The intention in amending the act in 1906 was to broaden and strengthen the statute, and not to weaken it in any particular.

The construction contended for would remove from the operation of the law any line wholly within a State, even though it transported as a link in a through route freight which was moving in interstate commerce. The line within the State might give rebates and preferences without fear of prosecution. The United States could not prosecute because the statute did not cover it. The State could not prosecute because the road would be engaged in interstate commerce within the meaning of the Constitution, and its action in that particular would be beyond the control of the State. (*Norfolk & Western R. R.* v. *Pa.*, 136 U. S., 114.)

But the statute will be construed so as to carry out, and not defeat, the purposes for which it was passed (*United States* v. *Hartwell*, 6 Wall., 396; *Am. Security & Trust Co.* v. *D. C.*, 224 U. S., 491).

Since 1906 many cases have arisen under this act, but this is the only one which counsel have been able to find in which this contention has been raised. The Commerce Commission has in its every day workings construed this act as still applying to such carriers. And this court would seem to have put the question at rest in *Southern Pacific Terminal Co.* v. *I. C. C.* (219 U. S., 498, 525).

Without further consideration, therefore, of such a construction and assuming that the office of the parentheses is to limit the clause therein inclosed to transportation partly by rail and partly by water, the act is susceptible of two constructions.

One is that the act applies to the State carriers even though they act independently and make no common arrangement for continuous transportation if interstate shipments actually move over their lines.

This construction gives meaning to the insertion of the parentheses and seems reasonable, especially in view of the fact that section 1 was amended at the same time by requiring carriers to establish through routes, and under section 15 the Commission was given authority to establish such route if the carriers failed to do so. Under this authority if a carrier participates in interstate commerce the Commission may compel it to make arrangements with connecting carriers for continuous shipments.

This construction is adopted by the majority of the Court of Appeals for the Eighth Circuit in *U. S.* v. *Colo. & N. W. R. Co.* (157 Fed., 321, 329) by the Commerce Court in this case (R., 107), and by the

majority of the Commerce Commission in *Leonard* v. *Kansas City Southern Ry. Co.* (13 I. C. C. Rep., 573).

In a concurring opinion in that case, Commissioner Harlan expresses the other view that the law applies to the State link only when there exists common control, management, or arrangement for a continuous shipment.

And apparently without considering the effect of the insertion of the parentheses, the law has been applied as still requiring a common control, management, or arrangement.

Standard Oil Co. v. *U. S.*, 179 Fed., 614, 620.

But in this case the law is applicable under either construction, for the common arrangement for continuous shipments is clearly shown here.

The Stock Yard Company is the terminal of the trunk lines; in the ordinary course of business it receives the cattle from the shipper and loads them on the car, and the shipment is then begun; the Junction Company continues the shipment to the trunk line, a distance of several miles, and the trunk line completes the shipment. There is thus but one continuous journey in which the three carriers have participated.

A through bill of lading is given, and it is immaterial that it is not joined in by the Stock Yard and the Junction Company. It covers the cattle from the beginning to the end of the journey.

A conventional or contractual division of the freight is made; it is immaterial that two of the carriers alway receive the same amount—they always

render the same service. This amount as to the Junction Company is published in the tariffs of the trunk lines and is known to all.

This long-established practice makes, and is sufficient evidence of, a common arrangement between the carriers.

2. *Both the Stock Yard Company and Junction Company are common carriers.*

(*a*) A common carrier is one who undertakes for hire to transport the goods of others who may choose to employ him, from place to place. He is, in general, bound to take the goods of all who offer, unless his complement for the trip is full, or the goods be of such a kind as to be liable to extraordinary danger or such as he is entitled to refuse.

Niagara v. *Cordes*, 21 How., 7–22;
Redfield on Carriers, Ed. of 1869, 1;
Dwight v. *Brewster*, 1 Pick., 50;
Wiggins' Ferry Co. v. *East St. Louis Ry. Co.*, 107 Ill., 450–457;
Gordon v. *Hutchinson*, 1 W. & S. (Pa.), 285;

Carriers of live stock are common carriers.

Myrck v. *Michigan Central Ry. Co.*, 107 U. S., 106;
5 Am. & Eng. Enc. of Law, 2d ed., 428.

The extent or nature of the transportation, the length of the railroad, and the length of the haul are immaterial. If the carrier holds itself out to the public as ready and willing to perform particular acts of transportation, and its business of transporta-

tion is limited to those particular things, it is a common carrier as to those things.

Wiggins's Ferry Co. v. *East St. Louis Ry. Co.*, 107 Ill., 457, and cases above cited.

In the Wiggins Ferry case, a railroad was organized under the railroad and warehouse act of Illinois "solely for the purpose of transferring railroad cars, freight between different depots, warehouses, elevators, manufactories, etc., that may be on its line or may be reached by its lateral tracks," and its line was built upon a single street in the city of East St. Louis. In holding it to be a common carrier the court said:

> Every common carrier has the right to determine what particular line of business he will follow. He may hold himself out as a carrier of freight or of passengers only. So, if he holds himself out as a carrier of a particular kind of freight, or of freight generally, prepared for carriage in a particular way, he will be bound to carry it to the extent and the manner proposed. He will, nevertheless, be a common carrier.

(b) Under their charters and by reason of their activities, the Stock Yard Company and the Junction Company come within these definitions.

Each company was organized as a railroad company.

From the charter of the Stock Yard Company, as already set forth, it appears that it was authorized

not only to build its railroad, but to transport cattle, freight, and property of every kind between the railroads connected by it, with authority to fix its charges for such transportation, and that it was to be subject to any general law relating to stock yards or to railroads (R., 24).

A corporation can not deny the provisions of its charter, nor the nature of its organization.

> *Randolph* v. *Post*, 93 U. S., 502;
> *Improvement Co.* v. *Slack*, 100 U. S., 648;
> *Union Trust Co.* v. *Randall*, 20 Kans., 515.

This principle is, in fact, supported by the cases cited by the court below as holding to the contrary.

As railroads, the properties of the defendants are, under the constitution of Illinois, common to the public. That constitution (art. 11, sec. 12) provides that all railroads are—

> declared public highways and shall be free to all persons for the transportation of their persons and property thereon under such regulations as may be prescribed by law.

In the reply brief below for both the Stock Yard Company and the Junction Company the present counsel for those defendants said:

> *It is conceded in the case at bar that the Chicago Junction Railway Company is a common carrier*, but it is not conceded that the Congress of the United States has subjected or attempted to subject to the provisions of the act to regulate commerce a common carrier organized under the laws of the State of Illinois,

doing business wholly in the State of Illinois, under the facts as they appear in the record in the case at bar.

Such concession was accepted by the court below (R., 104).

As already shown in this brief, the properties of the Stock Yard Company and the Junction Company are "railroads" within the definition of the Hepburn Act, and their activities are "transportation" as defined therein.

And both companies hold themselves out to the public generally, or to such part of the public as needs their services, to perform those services for hire. This the Junction Company does by a printed tariff which is in general circulation in the city of Chicago.

But, as said by Mr. Justice Van Devanter in *Union Stock Yards Co.* v. *U. S.* (169 Fed., 406), it would be of little significance if the Stock Yard Company did not hold itself out to carry live stock for the public, for such holding out is made by all the trunk lines entering Chicago, and the Stock Yard Company stands ready and willing to conduct and actually does conduct, for hire, a part of the transportation of every live-stock shipment going over any of those roads.

3. *The lower courts have held that stock yard companies are common carriers and are engaged in interstate commerce.*

Heretofore we have discussed the matter without reference to these decisions.

In *Covington Stock Yards Company* v. *Keith* (139 U. S., 128, 136), this court said that the transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered to the consignee.

In *Walker* v. *Keenan* (73 Fed., 755, 759), the Court of Appeals for the Seventh Circuit, said that the hauling the cattle from one point to another, and providing the car, track, engine, and servants for that purpose, are no more a part of the service rendered by the carrier than are the loading and unloading and providing the appliances and servants for those purposes.

So, in the following cases it was directly held that stock yard companies are common carriers engaged in interstate commerce.

> *U. S.* v. *Union Stock Yards of Omaha*, 161 Fed., 919, 924; affirmed, 169 Fed., 404; opinion by Justice Van Devanter.
>
> *U. S.* v. *Sioux City Stock Yards*, 162 Fed., 556.
>
> *Belt Ry. Co.* v. *U. S.*, 168 Fed., 542.
>
> *U. S.* v. *Ill. Terminal Ry. Co.*, 168, Fed., 546.

In *McNamara* v. *Washington Terminal Co.* (37 App. Cas. D. C., 384), approving these decisions, it is held that the Washington Terminal Company is a common carrier.

It is true that in these cases the Stock Yard Company operated in its own name its railroad

tracks, and that Mr. Justice Van Devanter, in *Union Stock Yards* v. *U. S.* (169 Fed., 404), supra, said:

> It must be conceded that the stock yards company would not be a common carrier, nor the property used by it a railroad, if its operations were confined to maintaining the sheds or pens, to unloading shipments therefrom, and to feeding, watering, caring for, and otherwise handling live stock therein.

Inasmuch as it was held for other reasons that the Stock Yard Company was a common carrier, this remark is a dictum. That was a prosecution under the safety-appliance law, and there was not called to the court's attention the definitions of railroad and transportation in the Hepburn Act of 1906. As already shown, the property used by the Stock Yard Company is railroad, and its services are transportation, as therein defined. It is therefore a common carrier.

And the Commerce Court in following this dictum and holding that a carrier must "transport from point to point" overlooked these definitions.

But the truth of the matter is that the Stock Yard Company and the Junction Company are still component parts of one system, which was and still is within the commerce law. Prior to 1897 the Stock Yard Company operated in its own name the railroad and engaged in all the activities which caused the courts in the foregoing cases to hold stock yards to be common carriers. By separating the railroad

tracks from the stock yard itself, and undertaking to operate each under a different name, though still carrying on, for all practical purposes, their activities in the same manner as before, the Stock Yard Company did not remove either part of the system from obedience to the act.

The instrument by which the Stock Yard Company turned over the operation of its road to the Junction Company is designated a lease, and provides for a rental of $\frac{2}{3}$ of the net revenues not only of the tracks turned over under the agreement, but of all other tracks then operated or thereafter acquired by the predecessor of the Junction Company. It will be remembered that the predecessor then owned tracks running between the States of Illinois and Indiana, and was engaged to a large extent in the same character of terminal business as was the Stock Yard Company. The terms of this agreement would seem to make the Stock Yard Company and the Junction Company in reality partners in the operation of the tracks of the Stock Yard Company within the decision of this court in *Meehan* v. *Valentine* (145 U. S., 623).

The profits are to be shared between the two companies in proportions of two to one. It is significant that while the Stock Yard Company's share is designated rent, it is not payable at regular intervals, but is turned over "from time to time" as may be required by the Stock Yard Company.

But whether the two companies be legally partners or not, the evidence shows that they are in reality but

one within the decision of this court in *Southern Pacific Ry. Co.* v. *I. C. C.* (219 U. S.).

The auditor of the two companies is the same, which makes unnecessary the provision of the agreement that the Junction Company shall turn over its books to the Stock Yard Company for examination in ascertaining the profits.

The interests of these two companies are identical. The prosperity of the one means the prosperity of the other. No stock can come to the stockyard unless it moves over the lines of track operated by the Junction Company. No dead freight can move in or out of the industries located on the stockyard property and lines of railway unless it moves in or out on the lines of railroad operated by the Junction Company. The more shipments of live stock there are moving in and out of the yards, the greater revenues will the Stock Yard Company derive for its loading, unloading, and reloading, and transferring in transit, and the greater will be the revenues of the Junction Company; and the greater the revenues of the Junction Company, the greater will be the Stock Yard Company's percentage of such revenues. The Investment Company is practically the sole stockholder in the Stock Yard Company and the Junction Company. And its interest is identical with the interest of each of the other companies.

The identity of the single interest can not be concealed by the multiplication of the separate legal entities. Equity will look behind the separate

organizations to determine whether the interest of all is one and the same.

Kendall vs. *Klapperkhal* (Penn. State), 52 Atlantic Rep., 52–96.

Northern Securities Co. vs. *U. S.*, 193 U. S., 197.

Swift & Co. vs. *United States*, 196 U. S., 375.

Southern Pacific Terminal Co. vs. *Interstate Commerce Commission*, 219 U. S., 498.

U. S. vs. *M. Refrig. Transit Co.*, 142 Fed. 247; 145 Fed., 1007.

II.

The payment by the Stock Yard Company to the Pfaelzers, in accordance with the contract, would constitute a rebate, concession, and unlawful discrimination.

1. Section 2 of the act to regulate commerce is as follows:

> That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust dis-

> crimination, which is hereby prohibited and declared to be unlawful.

Section 3 of the act to regulate commerce is as follows:

> That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

These provisions were reinforced by the so-called Elkins Act, as amended June 29, 1906. It made it unlawful for "any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination *in respect to the transportation of any property* in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof *whereby* any such *property* shall by any *device whatever* be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced." (Sec. 1, Elkins Act.)

It will be noted that the portion of section 1 of the Elkins Act above quoted makes unlawful a con-

tract which has for its subject matter the procuring of the transportation of property in interstate commerce by a carrier subject to the act whereby such property by a device shall be transported at less than the tariff rates of such carrier. The statute forbids any person making any kind of an agreement with another whereby the one shall procure for the other the movement of his freight at less than tariff rates.

Said section makes the tariffs so filed conclusive as against such carriers; makes the offense against the carrier complete by proof that the shipment was carried by it at less than its published rate, or that it offered a concession or discrimination that would cut its rate; and an offense by the shipper if he knowingly accepts a rebate, concession, etc., from the regular rate.

Section 1 of the Elkins law, above quoted, is broader than the provisions of the Elkins law which prescribes the punishment for the taking or giving of rebates. The act declares certain acts to be unlawful, but it does not prescribe a punishment for all persons who perform those acts. Nevertheless a contract made in violation of the declaration in the statute would be illegal, even though all the persons making the illegal agreement might not be subject to criminal punishment.

In construing the sections of the statute above quoted this court and the lower courts have stated in a broad way that it was the intention of Congress

to prevent a departure from the published rates and schedules in any manner whatsoever.

American Express Co. v. *U. S.*, 212 U. S., 532; *New York, New Haven & Hartford R. R. Co.* v. *I. C. C.*, 200 U. S., 391.

In this connection see:

I. C. C. v. *Reichmann*, 145 Fed., 235; *Thomas* v. *United States*, 156 Fed., 897; *United States* v. *Milwaukee R. Transit Co.*, 142 Fed., 247; (S. C.), 145 Fed., 1007; *C. & A. Ry. Co.* v. *U. S.*, 156 Fed., 558; *U. S.* v. *D., L. & W. R. R. Co.*, 152 Fed., 269; *A., T. & S. F. Ry. Co.* v. *U. S.*, 170 Fed., 250; and *Wight* v. *U. S.*, 167 U. S., 512.

In a number of the cases the departure from published tariffs was accomplished by payments that were said to have been made to the shippers in payment of other things, but in every instance the court looked behind the alleged transaction to ascertain whether the payment in fact showed that the carrier transported the property at less than its tariff rates or whether the shipper had his property moved at less than the tariff rates. See authorities last cited.

It is not always necessary that the shipper and the railroad act together; the shipper may, in fact, by some device, procure the transportation of the property at a cost to him of less than the tariff rates, while the carrier may in fact exact the tariff rates on such shipments.

I. C. C. v. *Reichmann*, 145 Fed., 235.
Thomas v. *U. S.*, 156 Fed., 897.

A carrier desiring to stimulate traffic can not disregard the economic conceptions upon which the interstate commerce law rests and substitute in their stead its ideas as to what is best for itself and for the public, if in carrying out such policies its increased traffic is moved at less than the tariff rates. A contract of the character indicated will be unlawful; and the violation of the statutory prohibition depends not upon the fact whether the carrier *intended* to violate the statute, but depends upon whether acts *done* are in violation of the statute. (*New York, New Haven & Hartford R. R.* v. *Interstate Com. Com.*, 200 U. S., 398.)

2. *Such payment would amount to a return to the Pfaelzers of a part or all of the moneys paid out by them as freight.*

Section 2 of the act to regulate commerce, quoted above, is generally referred to as covering the prohibition against rebating. It declares that rebating in any form is unjust discrimination, and that the same is unlawful.

Section 3 of the act to regulate commerce is the one that defines undue or unreasonable preferences in favor of any particular person, etc., and undue or unreasonable prejudice or disadvantage against other persons, etc., to be unlawful.

Usually violations of section 3 can be determined only after an investigation of all the facts. It can not be doubted, however, that the payment of money by a carrier to a shipper would be a self-evident preference and a violation of sections 2 and 3

of the act to regulate commerce, and also a violation of section 1 of the Elkins law.

Section 2 of the act to regulate commerce is violated only when one man is charged more than the other for the same service; but that would give a preference and create a disadvantage under section 3. A violation of the latter section may arise even if the preference is not to a shipper.

Section 1 of the Elkins Act is violated whenever the carrier charges or offers to charge for its transportation less than the rates contained in its tariffs, or whenever the shipper procures, or makes, or offers to make, or solicits an agreement whereby someone is to procure the movement of his freight at less than those charges.

The sections of the statute referred to make the contract a violation of law, even if the Pfaelzers were not such shippers. However, the Pfaelzers are shippers. Every year they are obliged to buy live stock in the Kansas City, Louisville, and other markets for slaughter at their plants, and for the past five years the freight charges paid by them on such shipments to the trunk lines have aggregated $2,800 annually, out of which the trunk-line carriers paid the Junction Company and the Stock Yard Company for their services in connection therewith.

We therefore have under the Pfaelzer contract an agreement on the part of the Stock Yard Company to pay to the Pfaelzers the sum of $50,000 if the latter build a slaughtering plant on the tracks of the

Stock Yard Company and maintain and operate the same for the period of 15 years, during which time the Pfaelzers are to buy at the stock yards all live stock slaughtered and packed at their plant or within 200 miles of Chicago, but if not bought at the yards must pass through the same, paying customary tolls, or pay the tolls if they do not pass through.

It is at once certain that any increase in the movement of live stock through the yards by the Pfaelzers will increase the revenues of the Junction Company and the Stock Yard Company. The Stock Yard Company will unload and deliver more cars of cattle, and the Junction Company will transport more dead freight to and from the yards. In all instances, the freight charges will be paid by the Pfaelzers, either in the price of the stock at the yards, or will be paid by the Pfaelzers direct to the trunk line carriers as the shippers of the stock which they purchase outside of Chicago, and the latter will pay the Stock Yards Company and the Junction Company their respective charges for their services rendered in such through transportation.

The Stock Yard Company then takes its two-thirds of the revenues thus accruing to the Junction Company, and its revenues accruing from its loading and delivering charges, and pays the same to the Pfaelzers.

It is claimed, of course, that the payment is made for the building of the plant, which will increase the business of the Stock Yards Company, but that increase can come only through the increased volume

of freight moving through the yards, and as a matter of actual figures if the Pfaelzers pay but $2,800 in freight charges annually, the $50,000 payment would cover their freight charges for a period of 15 years.

Every other shipper of live stock sending his cattle to the stock yards must pay the legal rates of the carriers, out of which the Junction Company and Stock Yards Company are paid for their services. If this contract is performed the shipper of live stock from Kansas City, whose cars of cattle move in the same trains with the cars of cattle belonging to the Pfaelzers, will pay the full tariff rates, while the payment in question will permit the Pfaelzer stock to move from the same points practically without charge. This clearly is a violation of section 2, and an undue preference under section 3.

The contract would be a *direct* violation of the Elkins law if the defendants filed tariffs or concurred in those of the trunk lines naming the through rates. It is an indirect violation through the departure from the through rates published by the trunk lines.

The contract can not be defended in equity against the provisions of the Elkins law because of the failure of said defendants to file tariffs. Such defense must rest on a plea of violation of section 6 of the act to regulate commerce.

For the purposes of this suit, equity will consider that to have been done which ought to have been done.

The Government contends that the contract is not only a direct violation of the sections of the acts referred to, but that it also constitutes a device whereby said provisions are violated.

If we assume for the moment the right of the carrier to make donations, it can not make them unless it publishes them in the tariffs making the enjoyment of such allowances the right of all. We do not, however, concede that the carrier under the law has a right to pay out money for the building up of industries along its line, when such donations are made upon the theory that such industries will produce an increased amount of traffic. Other points must of necessity help pay for a donation of that character, but if that is not so the donation must, in the end, be paid for by the increase in the freight traffic produced by such industries. The result is, in the latter case, that the donations will in fact be paid out of the freight charges on the increased traffic, and the industries receiving the donation will be having their freight moved for nothing until they have reached the point where the increased traffic is in excess of the donation.

The contract itself is forbidden by the sections of the statute above quoted, in plain terms, and is the same kind and character of a contract that was condemned by this court in the case of the New York, New Haven and Hartford Railway Co., 200 U. S., 398. And it will not do to say that the parties in good faith made the contract believing that they had the right so to do. It is unnecessary that the con-

tract be made in fraud to make the contract a violation of law or to make it a device forbidden by the law. (*N. Y., N. H. & H. Ry. Co., supra*, and *Armour Packing Co.* v. *U. S.*, 209 U. S., 71.)

III.

The payment of such sum would be unlawful on the part of the Stock Yard Company and the Investment Company, and the receipt thereof would be unlawful on the part of the Pfaelzers.

1. *It is unlawful on the part of the Stock Yard Company, because—*

(*a*) A common carrier is forbidden to give any such rebate, concession, or discrimination.

(*b*) The prohibition applies to all persons, whether carriers or not.

(*c*) Assuming that the agreement of 1897 is a lease, any act by the lessor Stock Yard Company is unlawful if it would be unlawful if done by the lessee Junction Company.

Section 1 of the Elkins law provides—

> That anything done or omitted to be done by a corporation common carrier, subject to the act to regulate commerce and the acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said acts or under this act, shall also be held to be a misdemeanor committed by such corporation.

It has already been shown that the Junction Company is a common carrier, and therefore if this payment were being made by the Junction Company it would be illegal. Under the foregoing clause the same act being done by the lessor Stock Yard Company is also illegal.

2. *It is unlawful on the part of the Investment Company, because—*

(*a*) The prohibition applies to all persons.

(*b*) If the contract is illegal as to the Stock Yard Company, the principal, it is also illegal as to the guarantor.

> Brandt Suretyship and Guaranty (3d ed.), sec. 20.
>
> *McCanna* v. *Citizens Trust Co.*, 76 Fed., 420, 422.

(*c*) The Investment Company and the Stock Yard Company, as well as the Junction Company, are one in the eyes of the law.

The Investment Company owns over 90 per cent of the stock of the Stock Yard Company, which it procured immediately upon its organization in 1890. It controls and elects the board of directors of said company. It owns all of the stock of the Junction Company, and likewise controls and elects the board of directors of that company. It is as if John Smith was the sole stockholder in each company, and to say that for the purposes of control and actual interest John Smith would not direct the destinies of the three concerns is to indulge in a legal fiction that they are still separate entities.

The Investment Company, with its ownership of the stock of both companies, and its election of the board of directors, has the same interest in the operation of the Stock Yard Company and the Junction Company as those companies themselves. The Investment Company is in fact the same in interest as the other two companies. In its answer it admitted that, as the party most interested in the maintenance of the yards, as the party most interested in the property of the stock yards, which owns the property of the Junction Company, it had seen fit to guaranty this Pfaelzer contract, as well as to pay out in the period of years following 1891 the sum of $4,000,000 for the location of industries on its property. All of these payments had to come out of the earnings of the Stock Yard Company and the Junction Company, and were produced from interstate commerce, and must, in turn, have been paid to shippers of interstate commerce. Four millions of dollars taken from the earnings of two common carriers to carry out the policy of stimulating traffic for the building up of said properties. The money so paid out must have come from the public, and the freight charges of the two carriers might well have been reduced to the public had it not been for the payment of this large sum of money. Equity will certainly look to the identity of the interest of the Investment Company, the Stock Yard Company, and the Junction Company, and it will not allow an evasion of the law by the ordinary device of the multiplication of the one interest into separate legal entities.

Southern Pac. Co. v. *I. C. C.*, 219 U. S., 498, and cases cited on page 40.

IV.

The Commerce Court has jurisdiction of this bill.

The bill was filed under the provisions of sections 2 and 3 of the Elkins law.

The matters complained of are all violations of the act to regulate commerce and the Elkins law, committed in one form or another by all the defendants. The bill does not charge the same violations of law against all the defendants, but all the defendants in some form are charged with violations of said act, and the acts of each so charged contribute and make possible the violations of the act on the part of the other defendants.

It may be that a part of the subject-matter of this suit could have been remedied by a mandamus proceeding, but unless all the matters complained of could be adjusted by that remedy there was not a full and complete remedy at law. The remedy at law must always be as full and complete as the remedy in equity; falling short of that, the legal remedy is not adequate. Unless the remedy in equity had been pursued, there would have been at least three and possibly four separate suits to procure the relief sought in this bill.

While it is too late to raise the question of multifariousness as to this bill, it is contended that such charge would not lie if the question were still open. A bill is not multifarious merely because it asks different relief against different parties to the same bill, or because the acts complained of in the bill are not charged against all parties.

On the point that the Commerce Court had jurisdiction to and should have determined whether the Pfaelzer contract violated the law, counsel for the United States and the defendants are in accord.

V.

That portion of the decree appealed from in Case 622 should be affirmed, and the part appealed from in 621 should be reversed, with directions to enter a decree in accordance with the prayer of the petition.

WILLIAM E. LAMB,
Special Assistant to the Attorney General.
JESSE C. ADKINS,
Assistant Attorney General.

○

Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

Office Supreme Court, U. S.
FILED.
SEP 24 1912
JAMES H. McKENNEY
Clerk

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, A CORPORATION; THE CHICAGO JUNCTION RAILWAY COMPANY, A CORPORATION; THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY, A CORPORATION; AND DAVID PFAELZER, ABE PFAELZER, AND JONES L. PFAELZER, A COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF LOUIS PFAELZER & SONS,
Appellees.

No. 621

CHICAGO JUNCTION RAILWAY COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

No. 622

BRIEF AND ARGUMENT FOR

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO
and
THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY,
Appellees,

and also
CHICAGO JUNCTION RAILWAY COMPANY,
Appellant.

RALPH M. SHAW,
Solicitor for said Appellees and said Appellant.

GUNTHORP – WARREN PRINTING CO., CHICAGO

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, A CORPORATION; THE CHICAGO JUNCTION RAILWAY COMPANY, A CORPORATION; THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY, A CORPORATION; AND DAVID PFAELZER, ABE PFAELZER, AND JONES L. PFAELZER, A COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF LOUIS PFAELZER & SONS,
Appellees.

No. 621

CHICAGO JUNCTION RAILWAY COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

No. 622

STATEMENT.

These cases come here on appeal from the same decree entered by the United States Commerce Court.

In case No. 621 the United States (complainant or petitioner in the Commerce Court) is appellant and The Union Stock Yard and Transit Company of Chicago, a corporation, The Chicago Junction Railway Company, a corporation, The Chicago Junction Railways and Union Stock

Yards Company, a corporation, and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the name of Louis Pfaelzer & Sons, are appellees.

In case No. 622 the Chicago Junction Railway Company appealed from the same decree. In that case, therefore, it is appellant and the United States is appellee.

While under the rules of court the brief in No. 622 should be prepared, and in the hands of the United States prior to the time when its brief is due, and while on the other hand in 621 the brief of the appellees is not due until after the receipt of the brief from the United States, nevertheless in the interest of a coherent and orderly presentation of the entire case, and subject, of course, to the directions of the court, this brief will discuss on the merits all of the questions presented in each case, with the reservation on the part of both the appellant and the appellees to file such additional briefs, if any, as may be necessary after the receipt of the brief of the United States.

I.

THE NATURE OF THE CASE AND THE PLEADINGS.

The original suit in the Commerce Court was a suit in equity brought by the United States upon the application of the Attorney General at the request of the Interstate Commerce Commission against the Union Stock Yard and Transit Company of Chicago, an Illinois corporation (hereinafter called the "*Stock Yard Company*"); The Chicago Junction Railway Company, an Illinois cor-

poration (hereinafter called the "*Junction Company*"); The Chicago Junction Railways & Union Stock Yards Company, a New Jersey corporation (hereinafter called the "*Investment Company*"), and David Pfaelzer, Abe Pfaelzer and Jones L. Pfaelzer, a copartnership.

The bill was filed under Section 3 of the Elkins Act, and Sections 16 and 20 of the Interstate Commerce Act as amended by the Act of 1906.

In it the Government alleged that the Stock Yard Company and the Junction Company were common carriers, within the meaning of Section 1 of the Act to Regulate Commerce; that the "Investment Company" was identical in law with each of said companies. The bill prayed that said companies each be enjoined from engaging in said commerce until they should have filed lawful tariffs and reports with the Interstate Commerce Commission as required by the Act to Regulate Commerce; also that the Stock Yards Company be restrained from carrying out the terms of a certain contract said to have been made or about to be made by it with Pfaelzer & Sons which was charged to be illegal; also that the Investment Company be enjoined and restrained from carrying out its guaranty of said contract.

Broadly speaking the following questions are presented for decision:

(1) Is the "Stock Yard Company" a common carrier within the meaning of Section 1 of the Act to Regulate Commerce.

(2) Is the "Junction Company" a common carrier within the meaning of Section 1 of said Act.

(3) Is the "Investment Company" such a carrier, and, therefore, subject to the provisions of Section 1 of said Act.

(4) Irrespective of how the foregoing questions may be decided, is the contract assailed in the complaint illegal and should the "Stock Yard Company" and the "Investment Company" and the Pfaelzers be restrained from consummating it?

The answers to these questions necessarily depend upon the facts with respect to the organization and operation of the companies involved, the nature of the business in which they were engaged at the time of the institution of the suit, and the nature of the alleged contract.

The Pleadings.

These facts are contained wholly in the pleadings which consist of:

(a) The bill of complaint, together with the exhibits, filed by the United States. (Rec., 1-42.)

(b) The answer of the Stock Yard Company. (Rec., 45-55.)

(c) The answer of the Junction Company. (Rec., 55-65.)

(d) The amended answers of the Pfaelzers (Rec., 70-77), and the second amendment of the Pfaelzers. (Rec., 87-97.)

(e) And the answer of "The Investment Company. (Rec., 77-85.)

No replications were filed by the Government to any or either of these answers.

The cases are, therefore, here on bill and answer.

The rule in such cases is that all averments of the bill not denied and as well all new facts alleged in the answer must be taken as true.

In re Sanford Fork & Tool Co., 160 U. S., 247 (257).

Banks v. *Manchester*, 128 U. S., 244 (251).

II.

THE FACTS.

The facts shown by the pleadings are as follows:

(1) *The history of the Stock Yard Company and its activities:*

The Union Stock Yard & Transit Company of Chicago is a corporation created by virtue of a Special Act of the Legislature of the State of Illinois, approved in February, 1865. A copy of its charter is annexed to the bill of complaint as Exhibit "A." (Rec., 22-27.)

By Section 1 of this Act the corporation was created.

By Section 2 power was conferred upon it to locate, construct and maintain near the southerly limits of the City of Chicago:

> "* * * All the necessary yards, inclosures, buildings, structures, and railway lines, tracks, switches, and turnouts, aqueducts, for the reception, safe keeping, feeding, watering, and for the weighing, delivery, and transfer of cattle and live stock of every description, and also dead and undressed animals that may be at or passing through or

near the City of Chicago, and for the accommodation of the business of a general union stock yard for cattle and live stock, including the erection and establishment of one or more hotel buildings, and the right to use the same. * * * to make advances of money upon such cattle and live stock for freight or other purposes as may become expedient * * *."

By Section 3 it was provided:

"That said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be selected for its said yards, so as to connect, outside of the City of Chicago, the same with the tracks of all the railroads which terminate in Chicago, the lines of which enter the city on the south between the lake shore and the southwest corner of said city, * * * and to make connections with such suitable sidetracks, switches and connections as to enable *all of the trains running upon said railroads easily and conveniently to approach the ground selected for said yards*, and may make such arrangements or contracts with such railroad companies, or either of them, *for the use of any part or portion* of the track or tracks of such company or companies, which now is or hereafter may be constructed, for the purposes aforesaid, as may be agreed upon between the parties * * * and to transport and to allow to be transported *thereon between said railroads* and cattle yards, all cattle and live stock and persons accompanying the same to and from said yards, and may also transport and allow to be transported between the railroads entering said city, * * * freight and property of every kind as well as stock and cattle * * *."

Section 3 should be read in the light of Section 11 which contains this provision:

"Nothing in this act contained shall be

deemed, taken, or construed as conferring upon the company hereby created any powers or authority to maintain or operate a railroad for the conveyance of passengers or freight in the City of Chicago * * *."

By Section 4 power was conferred upon the Company to take and hold voluntary grants and donations of land, which might be necessary for the purposes for which the corporation was created, and in the event of its failure to agree with the owners thereof, power of condemnation was conferred upon the corporation.

After its creation the Stock Yard Company purchased and acquired real estate necessary for the construction and operation of a stock yards. Its present holdings consist of about 800 acres of land. Upon this land it has for nearly half a century been conducting its stock yards business. Pursuant to the authority vested in it by the Legislature it also built in the neighborhood of its yards a hotel which it has continuously operated from that time to this. It also constructed the railroad tracks authorized by its charter for use in connection with its stock yards. For a long period of time it operated its trains and cars over said tracks. They were, however, leased by it in 1897, and are now held and operated by the "Junction Company."

Answer of the "Stock Yard Company," Rec., 50.

Answer of the "Junction Company," Rec., 57.

A map of the tracks as originally constructed and as now operated by the Junction Company will be found on page 31 of the record.

These tracks lie wholly in the State of Illinois. *The operation thereof is probably different both in form and substance from the operation of most of the railroad track in the United States.*

These tracks intersect or connect with substantially all of the tracks of interstate carriers, hereinafter called "Trunk Line carriers," entering the City of Chicago. Dead freight coming to industries located at or near the yards may move in an unbroken line of rail carriage from points outside of the state to industries located at or near the stock yards district.

Bill of Complaint, Rec., 4.

Such freight may move on through bills of lading but—*the Stock Yard Company does not issue any bills of lading, nor does it undertake to carry, nor does it carry said freight any part of the distance over which it moves.* It does not operate the tracks or any of them, and does not participate in the revenue derived from the carriage of the freight.

Answer of the Stock Yard Company, Rec., 47.

(2) Live stock which is brought to the stock yards by the trunk line carriers from points either within or without the State of Illinois after it has been delivered at the platforms of the Stock Yard Company is unloaded by it. For this service it is paid by the trunk line carriers a fixed sum per car. The Stock Yard Company does not publish the sums paid by the trunk line carriers for this service or file with the Interstate Commerce Commission any tariff of the same.

Bill of Complaint, Rec., 5.

The service of unloading the stock is a service which the Stock Yard Company has performed for the trunk line carriers since the organization of the yards. It is rendered at the request of, and as the result of a contract between it and the trunk line carriers providing payment therefor.

Answer, Rec., 47.

Most of the stock so unloaded by the Stock Yard Company is consigned to consignees doing business at or near the yards on through bills of lading, *but the "Stock Yard Company" has nothing whatsoever to do with the carriage or the billing.*

Bill of Complaint, Rec., 5,
Answer, Rec., 48.

(3) The Stock Yard Company also when requested so to do loads live stock consigned by consignors doing business at the yards. For this service it is likewise paid a fixed sum per car by the trunk line carriers carrying the freight. It performs such loading service under a contract between it and the trunk lines, and it does not file any tariffs with the Interstate Commerce Commission with respect thereto.

Answer, Rec., 48.

The outgoing stock which it loads moves from points of origin on through bills of lading, *but the "Stock Yard Company" has nothing to do either with the issuance of the billing or with the rates or revenue received by railroads therefor.*

Bill of Complaint, Rec., 6.
Answer, Rec., 48.

(4) The Stock Yard Company is not in itself a dealer in cattle, *but it keeps and maintains a public market where all kinds of live stock are bought and sold by others.* As a part of its stock yard business it frequently feeds and waters stock in transit over the lines of the trunk line carriers. For this service it makes a charge, which is paid by such trunk line carriers to it under contract covering the same. It has performed such services since its organization. It does not and never has filed any tariffs with the Interstate Commerce Commission with respect thereto.

Bill of Complaint, Rec., 6.
Answer, Rec., 49.

(5) The Stock Yard Company also constructs when requested by trunk line carriers so to do partitions in cattle cars owned by the carriers. For this service it is paid by the owner of the equipment.

(6) It also feeds, beds and waters live stock shipped to consignees doing business at or near the yards. For this service it receives payment from the commission men engaged in buying and selling cattle at the yards. It does not file and never has filed with the Interstate Commerce Commission any tariff or schedule of such charges.

Bill of Complaint, Rec., 6.
Answer, Rec., 49.

(7) When the trunk line carriers bring live stock to the stock yards, the waybills accompanying said stock are handed by the employes of the trunk line carriers transporting the stock to the employes of the Stock Yard Company with what is termed a

"live stock stub" attached. Such waybills are taken by the employes of the Stock Yard Company to unload and count the animals in each car, and then the waybills, together with the stub are sent to the auditor of the Stock Yard Company. The live stock stub is retained by such auditor, and the original waybill is delivered to the local agent of the trunk line company delivering stock at the stock yards. The charges appearing on the waybills are collected by the Stock Yard Company from the consignees doing business at the yards. The Stock Yard Company advances to the trunk line carriers all charges, and twice a week it collects from the consignees the moneys it has advanced to the railroads.

Bill of Complaint, Rec., 14.

The Stock Yard Company advances these charges for *the accommodation and convenience of the patrons and customers of the Stock Yard Company.* These customers are the commission men, buying and selling live stock at the yards. The charges which the Stock Yard Company make for loading and unloading stock have nothing to do with the advances made by the Company on behalf of said consignees or commission men.

Bill of Complaint, Rec., 14.

Answer of the Stock Yard Company, Rec., 51.

(8) If any feeding charges accrue on stock originating at the stock yards, the Stock Yard Company, will notify the agent of the trunk line carrier, and that carrier collects such charges at the point of final destination, and remits them to the Stock Yard

Company. Such charges are not published or filed with the Interstate Commerce Commission in any tariff issued by the Stock Yard Company.

Bill of Complaint, Rec., 12.
Answer, Rec., 50.

(9) The trunk line carriers (transporting interstate shipments to and from points in the stock yards district) are not all supplied with scales. The Stock Yard Company maintains an office called the register's office, which furnishes weights on all outgoing freight from the stock yards. The men operating the register's office and performing said weighing are employes of and are paid by the Stock Yard Company, but the expense of maintaining such office is divided pro rata among the railroads making use of such service, and the Stock Yard Company is reimbursed for its expense in maintaining the same. The scales used in weighing such shipments are the same scales that are used by the Stock Yard Company when live stock is weighed for commission men doing business at the yards, and they are necessary for the use of the Stock Yard Company in the transaction of its stock yard business.

Bill of Complaint, Rec., 12.
Answer, Rec., 50.

(10) As has been stated, the defendant, the Stock Yard Company pursuant to the powers conferred upon it in its charter, leased all of its railroad to a corporation known as the State Line Company on February 15, 1897. It retained for its own corporate purposes only the loading and unloading platforms and facilities that it had constructed and used in con-

nection with its stock yards business. *From that time to this it has not operated, and has had nothing whatsoever to do with the operation of the railroad tracks.*

(2) *The History of the Junction Company and its activities:*

There was in existence in Illinois on December 15th, 1897, a corporation known as the Chicago & Indiana State Line Railway Company, hereinafter called the "State Line Company."

Bill of Complaint, Rec., 6.

Said State Line Company was organized under the general railroad act of the State of Illinois. On December 15, 1897, the said State Line Company entered into a lease with the "Stock Yard Company." A copy of said lease is attached to said bill of complaint and marked Exhibit "D."

By it the Stock Yard Company leased unto the State Line Company for a term of 50 years:

> All its railroad and railroad tracks, roundhouses, repair shops, machine shops, coal chutes, signal houses, then in existence, or theretofore used by the Stock Yard Company in connection with its railroad, and also all and singular all of the equipment and the telegraph lines, instruments and appurtenances owned or possessed by the railroad necessary or useful in or about the operation of the railroad tracks. Also the right in the future to maintain and operate upon the lands of the yards additional sidetracks and switch tracks and other appurtenances incidental or necessary to the useful and successful operation of a railroad, and also the franchise rights to operate such tracks.
>
> *Exhibit "D," Rec.,* 33.

Under the demise the lessee was to pay as rental to the lessor two-thirds of the entire net earnings, derived from the use of the property demised. (Rec., 35.)

Afterwards the State Line Company consolidated its railroad property with a certain other railroad corporation known as the Chicago, Hammond & Western Railroad Company. The consolidation agreement provided that the consolidated company should be known as the "Chicago Junction Railway Company." (Rec., 7.)

At that time, and as the result of the consolidation the Junction Company owned and operated, in addition to the tracks leased by the "Stock Yard Company" to the State Line Company, a belt line running around the City of Chicago from a point called Franklin Park, northwest of the City of Chicago in and to the City of Hammond, Indiana, and thence to Whiting, Indiana.

Bill of Complaint, Rec., 7.

But in November, 1907, the Junction Company sold to the East Chicago Belt Railroad Company, all that portion of its railroad running from Franklin Park to Hammond and Whiting, and divested itself of each, every and all of its railroad tracks excepting that part which had been leased to it by the Stock Yard Company under the lease of December 15, 1897.

Bill of Complaint, Rec., 7.

Answer, Rec., 57.

The Junction Company thereafter, and at the time of the commencement of the lawsuit, did not

own or operate any track or railroad except those operated by it under the lease from the Stock Yard Company.

These tracks are located wholly within the County of Cook and State of Illinois. They consist of main tracks running east and west from a point on the lake front, in the City of Chicago, near the intersection of Thirty-ninth street, and the tracks of the Illinois Central Railroad Company, westerly 8¼ miles to a point in the State of Illinois. In addition to the main tracks running between those two points, the company operates a large number of switch tracks in and through the stock yards district to the industries located there.

Bill of Complaint, Rec., 8.
Answer, Rec., 57.

THE DETAILS OF THE OPERATION OF SAID TRACKS.

(1) Through trains of interstate freight hauled by the motive power of trunk line carriers frequently use these tracks in order to pass from trunk lines easterly of the city to trunk lines westerly of the city and *vice versa*. Such carriers pay a trackage charge for such use—a *fixed sum per car to the Junction Company regardless of the character of the commodity contained in the car, or where the same is received, or its destination, or the amount of revenue derived by the trunk line from the haul*. The Junction Company has no interest whatsoever in the rate or the commodity.

Bill of Complaint, Rec., 8.
Answer, Rec., 58.

(2) Large numbers of cars loaded with dead freight in *carload lots* are brought into the State of Illinois by trunk line carriers from points outside of the state destined to points inside the district served by the Junction Company, or to industries located at or near its rails. Sometimes such freight is destined to points beyond the district served by the Junction Company. These cars are placed by the trunk line carriers on what are known as the receiving tracks of the Junction Company. Each car is marked by the trunk line carrier handling the same so as to show the name of the consignee, and indicate the point to which the same is to be transported by the Junction Company. The Junction Company without any order or any arrangement made with the consignee or any other person, picks up such car, and with its own motive power carries it from such receiving track to the industry or consignee designated by the Trunk Line Company. If the freight is destined to some point beyond the rails of the Junction Company, the Junction Company transports the car to the receiving track of the outgoing trunk line carrier. Such freight moves on through bills of lading. *But—the Junction Company does not issue or handle the bills of lading, and has no negotiations with either consignors or consignees for such freight. The service which the Junction Company performs is a switching service. For this service in making the switch from the receiving tracks to other points on its own rails, or to the receiving tracks of the outgoing trunk line carrier, the Junction Company is paid a fixed*

switching charge by the trunk line carrier. This charge is the same for all cars of freight, irrespective of the commodity, or of its origin, or of its destination, or of the amount of revenue received from the haul by the trunk line carrier.

The trunk line carrier in each instance absorbs this switching charge.

All of the trunk line carriers have agents in the Stock Yard district who attend

(a) to the collection of freight charges on inbound freight,

(b) to the ordering of cars wanted by shippers,

(c) the issuance of bills of lading on outgoing freight, and

(d) to such negotiations as may arise between the consignee and the carrier with respect to the surrender of bills of lading for inbound freight or other matters.

The Junction Company deals solely with the trunk line carriers. It does not negotiate with the shippers or consignees respecting either incoming or outgoing freight.

Answer, Rec., 58.

(3) When shippers located in the stock yard district wish cars for loading either dead or live freight, the car is placed at the loading docks by the Junction Company upon an order received by the Junction Company *from a trunk line carrier.* For this switching service the Trunk Line Carriers pay the Junction Company a switching charge which the trunk line carriers absorb in each instance. The Junction Company issues no billing of any kind. All

billing is issued by the trunk line carriers. *The compensation which the Junction Company gets for the outbound movement is a mere switching charge and is the same in all instances irrespective of the character or of the origin or destination of the cars of freight or of the length of the haul, or of the revenue derived by the trunk line carrier therefrom.*

Bill of Complaint, Rec., 8 *and* 9.
Answer, Rec., 58 *and* 59.

(4) There is located in the stock yard district on the tracks operated by the Junction Company a station known as the Union Freight Station. This station handles what is known as "L. C. L. (less than carload lots of freight) freight." Various industries located in or about the stock yards deliver L. C. L. freight to the Union Station where the Junction Company places it in a car belonging to the trunk line company, which will eventually receive the car from the Junction Company and make the line haul. The cars when so loaded are moved by the Junction Company from the Union Station, and placed on the receiving tracks of the outgoing trunk line carriers. From such receiving tracks the trunk line carriers pick up the cars with their own motive power and take them to their final destination. *The Junction Company receipts for such freight in the name of the trunk line carrier which contracts to make the line haul. It will not receipt to the shipper in its own name.* Each of the trunk lines terminating in Chicago has furnished the Junction Company with stamps to be used by it. A

copy of one of said stamps is shown in the bill of complaint on page 10 of the record. *The receipts so issued in the name of the Trunk line* may be exchanged at the office of the trunk line carrier for more formal bills of lading if the consignors desire it.

In case of prepayment of L. C. L. freight, the Junction Company collects the charges and receipts for such payment *in the name of the trunk line carrier*, and remits the collection so made to the trunk line carrier.

With respect to all L. C. L. freight the Junction Company makes no charge to the shipper or consignee. It is paid for its service as detailed above by the trunk line carrier making the line haul at the rate of five cents per hundred weight on all freight handled.

Bill of Complaint, Rec., 11.
Answer, Rec., 59.

(5) The Junction Company has an arrangement with the Baltimore & Ohio Railroad Company, a trunk line carrier, by which the latter brings from points east of Chicago L. C. L. freight destined to points west of and outside of the State of Illinois. Such L. C. L. freight is delivered by the Baltimore & Ohio Company to the Junction Company in Illinois, at its Union Station, and the Junction Company unloads such L. C. L. shipments, distributes it into cars of western trunk line carriers, and delivers said cars to the receiving tracks of said trunk line carriers. For this service the Junction Company is paid by the Baltimore & Ohio Railroad Company

five cents per hundred pounds. *The Junction Company does not know the shipper in the transaction and the service rendered is a matter of contract between it and the Baltimore & Ohio Railroad Company.*

(6) It frequently happens that the trunk line railroads originating shipments of live stock outside of the State of Illinois and destined to points in the stock yards district in Illinois will haul the same with their own motive power over the tracks of the Junction Company to the unloading docks in the stock yard district. For this privilege the Junction Company charges each of the trunk line carriers so using said tracks a trackage charge, *which is a fixed sum per car upon every car passing over the tracks, and is the same irrespective of the origin of the freight or of the length of the haul, or of the character of the live stock contained in the cars, or of the revenue derived by the trunk line carrier for making the haul.*

Bill of Complaint, Rec., 11.
Answer, Rec., 60.

(7) In many instances carload shipments of horses originating outside of Illinois and destined to points in the stock yards district are transported from points of origin to Chicago in stock trains of the trunk line carrier to what is known as the loading platforms of the Stock Yard Company, and there the car containing the horses is set aside and picked up by the Junction Company and hauled by it to the unloading chutes specially provided by the Stock Yard Company for the accom-

modation of horses. For this service the Junction Company, in addition to the trackage charge referred to in paragraph (6) above, is paid a regular switching charge of so much per car. This switching charge is the same *irrespective of the origin of the freight or of the tonnage in the car.*

Although the foregoing freight may be handled on through bills of lading, *the Junction Company does not issue the billing or handle the billing in any way whatsoever.*

The Junction Company does not make or participate in the rate upon either carload, or L. C. L. dead freight, or live stock, or horses, nor does it issue any bills of lading with respect to any kind of freight. It has no transactions with respect either to the rate or to the issuance or surrender of bills of lading, or to negotiations between the carriers and the shippers.

The charges of the Junction Company are in all the instances referred to in the bill of complaint paid to the Junction Company by the trunk line carriers and is a fixed sum per car.

Bill of Complaint, Rec., 12.
Answer, Rec., 60.

(8) The Junction Company is responsible to trunk line railroads for such cars as are detained on its tracks longer than a given time, and the Junction Company in turn collects demurrage from any consignors or consignees of interstate freight who detain the cars longer than the free time allowed by the rules of the Junction Company.

Bill of Complaint, Rec., 13.
Answer, Rec., 61.

(9) The Junction Company also has scales suitable for the weighing of cars, and frequently, at the request of the shipper or consignee of interstate freight, weighs such freight, and for such service is paid by the consignor or consignee a fixed sum. It also weighs all interstate freight consigned to the Stock Yard Company, for which it receives compensation from the Stock Yard Company.

Bill of Complaint, Rec., 13.

Answer, Rec., 61.

(10) The method which the Junction Company has adopted for the operation of its tracks is substantially the same as the method which was in existence for the use and operation of the freight tracks by the Stock Yard Company before the lease to the State Line Company in December, 1897.

(11) The Junction Company has published tariffs showing the charges which it exacts and collects for its services in the transportation of property, as hereinbefore set forth, and also the charges that it makes for freight handled and transported by it in the method hereinbefore set out and delivered to it at the Union Freight Station. Such tariffs are in general circulation in and about the City of Chicago and especially about the Stock Yards district, but the tariffs have not been filed with the Interstate Commerce Commission.

Answer, Rec., 62.

(12) The respective trunk line carriers engaged in the transportation of property have published and now have on file with the Interstate Commerce Commission their tariffs which show the charges

exacted by the trunk lines for the services performed by them, and which show the charges of the Junction Company for the services performed for them by the Junction Company. The Junction Company, however, does not concur or join in said tariffs, and is in no way a party to said tariffs.

The Junction Company does not publish any tariffs with respect to freight originating at industries along the lines of its railroad and destined to points in other states or on the line of any other railroad.

Bill of Complaint, Rec., 15.
Answer, Rec., 62.

(3) *History of the defendant, the Chicago Junction Railways and Union Stock Yards Company, otherwise known as "The Investment Company," and its activities.*

The Chicago Junction Railways and Union Stock Yards Company is a corporation organized under the laws of the State of New Jersey as an investment company, with its principal place of business in the City of New York and State of New York. A copy of its charter is attached to the bill of complaint and marked Exhibit "B" (Rec., 27).

Immediately upon the organization of the corporation in 1890 it acquired and became the owner, and is now the owner of, and was on the date of the filing of the bill of complaint, the owner of over 90 per cent. of the shares of the capital stock of the Stock Yard Company.

It also owned at such time all of the shares of

the capital stock of the Junction Company, except the few necessary to qualify its directors.

The greater part of its income is derived from the earnings and dividends on the stock owned by it in the Stock Yard Company, and the Junction Company. However, it has substantial investments in other enterprises from which it receives an annual income. At the time of the filing of the bill of complaint in this case there was outstanding in the names of third persons a number of the shares of stock of the Stock Yard Company over which the Investment Company had no control, and no financial or other interest.

Bill of Complaint, Rec., 16.
Answer, Rec., 80.

The Investment Company does not own the property of either the Stock Yard Company or the Junction Company, and it has no legal interest in the property of either of said companies, and does not manage or control the same.

Answer, Rec., 80.

(4) *The facts with respect to the assailed contract.*

The defendants, David Pfaelzer, Abe Pfaelzer and Jones L. Pfaelzer, were a copartnership engaged in the slaughtering business. Their plant was located at the time of the filing of the bill of complaint in this suit in the vicinity of the tracks operated by the Junction Company, and the cattle pens of the Stock Yard Company. Said firm purchased live stock, sheep, cattle and hogs from time to time at points outside of the State of Illinois which it

shipped to itself at the stock yards. Said shipments moved from the points of origin to the consignee at Chicago in substantially the manner hereinbefore outlined for the movements of all live and dead freight to industries located at or near the Stock Yards.

Bill of Complaint, Rec., 17.

Since the filing of the said bill of complaint, said partnership has been incorporated, and a corporation under the name of Louis Pfaelzer & Sons has succeeded to the business of the partnership.

Answer, Rec., 92.

The movement of all freight consigned to Louis Pfaelzer & Sons tends to increase the business of the Stock Yard Company, and also the business of the Junction Company and, therefore, the revenues of each.

Bill of Complaint, Rec., 17.

While engaged in their business in 1906, the Department of Agriculture inspected the packing plant and notified the Pfaelzers to make certain changes. The Pfaelzers endeavored to comply with such order (Answer, Rec., 93), but in October, 1908, they were directed by the Department to erect a new plant that would meet with the regulations and requirements of the Department. Pfaelzer & Sons then endeavored to secure a suitable site. (Rec., 94.) Shortly afterwards on, to-wit, the 8th day of January, 1909, Pfaelzer & Sons received a further notice from the Government notifying them that after April 10, 1909, the Government would deny to them the further inspection of the products of their plant.

Pfaelzer & Sons thereupon called upon the officers of the Stock Yard Company for financial assistance in the matter of the erection of a new and modern packing plant. The Stock Yard Company refused the assistance, and Pfaelzer & Sons thereupon took steps to secure a new site in Kansas City, Missouri.

Answer of Pfaelzer & Sons, Rec., 94.
Answer of Jersey Company, Rec., 81.

The Stock Yard Company, learning of the proposed removal of the packing plant to Kansas City, resumed negotiations with the Pfaelzers, and as the result thereof the Stock Yard Company agreed with Pfaelzer & Sons to enter into the contract, which is assailed in the bill of complaint, and is attached to the bill of complaint as Exhibit "E."

The proposed contract after the recital of certain facts contained the following covenants:

(1) The Stock Yard Company agreed to pay to Pfaelzer & Sons $50,000 towards the construction of a modern slaughtering, packing and canning plant adjacent to the stock yards.

(2) Pfaelzer & Sons agreed to construct such a plant with a capacity for a daily kill of 250 cattle, 250 hogs, and 250 sheep; that the total cost of the plant should be $125,000, and that the plans therefor should prior to such construction be approved by the president of the Stock Yard Company.

(3) The $50,000 to be contributed by the Stock Yard Company to the partnership was to be paid as follows:

$25,000 when $50,000 of work should have been done upon the buildings and machinery, and the re-

maining $25,000 when $50,000 more of work and material had been expended in the construction.

(4) Pfaelzer & Sons agreed that for a period of 15 years they would conduct a general slaughtering and canning business at the proposed plant; that all the cattle and other live stock slaughtered by them about the City of Chicago, or within 200 miles thereof should be bought at the Chicago Stock Yards, or if not bought there should use the yards and pay the customary yardage, tolls, and charges; that the conduct of the business should be continuous except as interrupted by strikes, fires or cyclones, or other causes beyond their control, and that in the event it was so interrupted that it would be resumed again at the earliest possible moment.

(5) Pfaelzer & Sons further agreed that during said period of 15 years that they would not organize any other slaughtering, packing or canning plant in any other city or state, or become interested in any other such plant, but it was provided that nothing therein contained should prevent Pfaelzer & Sons from organizing a corporation for the purpose of taking over their business.

Exhibit, Rec., 40.
Answer of the Stock Yard Company, Rec., 53.
Answer of Pfaelzer & Sons, Rec., 94.

The performance of this contract by the Stock Yard Company was guaranteed by the Investment Company.

Bill of complaint, Rec., 41.
Answer of the Jersey Company, Rec., 81.

As applied to this contract the Stock Yard Company's answer, which is not controverted, shows the following to be the facts:

There are competitive stock yards established in many cities in the States of the United States, such as Sioux City, Iowa; Omaha, Nebraska; Kansas City, Kansas; St. Louis, Missouri; East St. Louis, Illinois, and Fort Worth, Texas. All of said stock yards have built up and established their business in competition with the Stock Yard Company of Illinois by offering and giving inducements, either in the shape of land or money, to packing houses or other industries to locate at or near the yards.

The contract made by the Stock Yard Company with Pfaelzer & Sons was made for the express purpose of maintaining itself as a stock yards, and increasing the volume of said business, and of protecting the business of the defendant in competition with other stock yards.

The Stock Yard Company admits in its answer that the execution and performance of the contract will tend to increase the amount of interstate freight moving over the tracks of the Junction Company; that it will also tend to increase the yardage to be collected by the Stock Yard Company, and that it might tend to increase the earnings of the Junction Company, and thus to increase the rentals resulting to the Stock Yard Company from the lease of these tracks. (Answer, Rec., 54.) But the Stock Yard Company denies that such a payment would constitute a payment of money in violation of the Act to Regulate Commerce, or of the Elkins Act.

Answer of the Stock Yard Company, Rec., 54.

Continuing, the Stock Yard Company claims the legal right to make like payments, at any time, either in money or property, for the purpose of protecting, maintaining and increasing its business whenever in the judgment of its board of directors it may be necessary so to do.

It alleges that the payment provided for in the contract has nothing whatsoever to do with the transportation of property and the rates and charges therefor, and no connection therewith.

It avers that such payments if made either to Pfaelzer & Sons, or to others for like purposes will be made for the purpose of increasing the business at the yards, and will not be in violation of any lawful act of Congress in existence.

If Pfaelzer & Sons had left the Stock Yard Company, and had gone to Kansas City, it would have been a direct loss to the stock yards.

THE INVESTMENT COMPANY'S CONNECTION WITH THE ASSAILED CONTRACT.

The Investment Company guaranteed the contract of the Stock Yard Company for the purpose of protecting its investment in the stock of the Stock Yard Company.

Answer of the Investment Company, Rec., 81-82.

The contract of guaranty was made because the Investment Company believed it to be its best interest to do so. The payments to be made by it under its guaranty were entirely separate and distinct from

any published tariffs of any railroad company, and have no connection directly or indirectly therewith, and have nothing whatever to do with charges made for transportation or the payments due from a shipper to a carrier therefor.

The business of the Stock Yard Company depends upon a stable demand and market created by the existence of numerous slaughtering, packing and canning establishments located at or near the yards.

It is impossible to maintain a stock yards at Chicago without having this demand, and the removal of establishments now situated in the immediate vicinity of the yards would greatly diminish the demand for live stock, the number of buyers, and correspondingly diminish and reduce the shipments of live stock, and the gross and net earnings of the Stock Yard Company.

For more than 25 years the Chicago Stock Yards have been competing for business with other yards established in other cities, such as Kansas City, Omaha, East St. Louis, Milwaukee, Fort Worth and Oklahoma. The corporations owning and operating stock yards at such other places have always subsidized slaughtering, canning and packing establishments. Such practice began in the St. Louis Yards in 1876 and has continued down to the present time; the latest instance is a subsidy paid by the Yards at Fort Worth and Oklahoma during the year 1910. In order to meet the competition and the inducements offered by competitors and thus to prevent the removal of the live stock market to other points, it has heretofore been deemed necessary by the In-

vestment Company, as the party most interested in the yards, to offer inducements and to grant subsidies so as to secure the maintenance and continuance of existing slaughtering, canning and packing establishments. To this end, beginning 1891 and continuing down to the present time, it has been the policy of the Investment Company to grant large inducements and subsidies to such existing establishments, and to make agreements for grants or subsidies, in consideration of covenants on the part of owners of slaughtering, canning and packing establishments to continue their business in the vicinity of the yards, and to purchase their live stock at the yards, or to establish new plants, and make such purchases at the yards.

Since July, 1891, it has expended more than $4,000,000 in such contracts, and by reason of such expenditures it has prevented the removal of many plants located in the vicinity of the Chicago yards, has increased the facilities and buying capacity of existing plants and has promoted and secured the location of other plants, thereby increasing and protecting the live stock market at Chicago and greatly adding to its revenue. (Rec., 84.)

III.

THE CONTENTION OF THE DEFENDANTS.

(1) While one or more of the defendants might have assailed the bill of complaint as being multifarious, nevertheless having in mind that a decision upon the merits of the questions involved would be of

far greater importance both to the Government and to the defendants, than the mere winning of a lawsuit upon some technical ground, *none of the defendants* have raised the defense of multifariousness, and they do not raise it now, but frankly and squarely meet each of the issues raised by the Government, and desire a decision upon the merits thereof.

Hefner v. *N. W. Life Ins. Co.*, 123 U. S., 747 (751).

Oliver v. *Piatt*, 44 U. S. (3 Howard), 333 (412).

(2) As to the merits of the case, the defendant, the Stock Yard Company under the facts insists:

(a) That it is not a common carrier within the meaning of Section 1 of the Act to Regulate Commerce.

(b) That whether it is a common carrier or not it has the right to now, and at all times to pay bonuses for the purpose of inducing any industry, or plant of any kind to locate at or near its yards, or to prevent any industry now located at or near its yards from removing therefrom.

(3) The Junction Company is, of course, not interested in the question of the contract made by the Stock Yard Company, but for itself it insists that it is not a common carrier engaged in interstate commerce within the meaning of Section 1.

(4) As to the reports required by Section 20 of the Act; each of said Companies takes the position that the bill of complaint does not show that any order has ever been entered by the Commission requiring them, or either of them to file any report under Sec-

tion 20 of the Act to Regulate Commerce, and therefore, that question is not presented in these cases.

(5) The Investment Company insists:

(a) that the mere fact that it is the owner of some of the stock of the Stock Yard Company, and all of the stock of the Junction Company does not make it identical with either or both of said companies; and

(b) *It likewise insists* that the fulfillment by it of its guaranty on the Pfaelzer contract is not a violation of any provision of any lawful act of Congress.

IV.

THE DECISION AND DECREE OF THE UNITED STATES COMMERCE COURT AND ERRORS ASSIGNED

The original decision and decree of the Commerce Court will be found on pages 99 to 121 of the record.

Its analysis of the questions presented will be found on pages 103 and 104. The first question considered was:

By its decision and decree the court (Judge Archbold dissenting) found:

> That the *Junction Company* is a common carrier within the meaning of Section 1 of the Act and decreed that within 60 days thereafter it should file its tariffs with the Commission as required by Section 6.
>
> Rec., 108-121.

The court found unanaimously,

> (a) That the *Stock Yard Company* was not a common carrier within the meaning of Section 1; (b) that it was the owner of a railroad within the meaning of that phrase as used in Section 20 of the Act, but that the Commission had never

ordered it to make a report under the provisions of Section 20; and (c) that the court did not have jurisdiction to determine whether the assailed contract was or was not illegal.

The bill was, therefore, dismissed as to the Stock Yard Company on two grounds, as to the first two questions for want of equity and as to the third for want of jurisdiction. (Rec., 110-111-120-121.)

The court found that the *Investment Company* was not a common carrier, and, therefore, dismissed the petition as to it both for want of equity and for want of jurisdiction.

The court having found that it had no jurisdiction to determine the legality of the assailed contract, the bill was also dismissed as to the Pfaelzers for want of jurisdiction. (Rec., 111-121.)

From this decree the Junction Company has appealed, asserting that the decree was erroneous in five particulars.

But—upon analysis these assignments of error raise only one question, to-wit:

Is the Chicago Junction Railway Company a common carrier within the provisions of Section 1 of the Act to Regulate Commerce, and therefore subject to the provision of Section 6?

The Government has also appealed, asserting the decree was erroneous in nine particulars:

But upon analysis they present only three questions:

First: Is the Stock Yard Company a common carrier within the provisions of Section 1 of the Act

to Regulate Commerce, and, therefore, subject to the jurisdiction of the Commission?

Second: Is the Investment Company subject to the jurisdiction of the Commission? and,

Third, Irrespective of whether either of these companies is or is not subject to the jurisdiction of the Commission, has the United States Commerce Court jurisdiction to determine the legality of the assailed contract, and if so is the contract unlawful?

In the presentation of the various questions presented by these cross appeals, we will consider first: the question raised by the appeal of the Chicago Junction Railway Company and, secondly, the questions raised by the appeal of the government.

II.

BRIEF AND POINTS.

1.

THE ACT TO REGULATE COMMERCE DOES NOT APPLY TO ALL CARRIERS OR TO ALL COMMERCE.
FOR THE PURPOSES OF THIS CASE, BEFORE A CORPORATION IS SUBJECT TO THE PROVISIONS OF THE ACT IT MUST SIMULTANEOUSLY BE

(a) A common carrier,

(b) A common carrier wholly by railroad, and also

(c) A common carrier wholly by railroad engaged in the transportation of passengers or property from one state or territory to another.

2.

A COMMON CARRIER BY RAILROAD WHOLLY WITHIN ONE STATE CAN SO TRANSACT ITS BUSINESS AS NOT TO SUBJECT ITSELF TO THE PROVISIONS OF THE ACT TO REGULATE COMMERCE.

Cincinnati, N. O. & Texas Pacific Ry. Co. v. *Interstate Commerce Commission*, 162 U. S., 184 (191).

3.

THE CHICAGO JUNCTION RAILWAY COMPANY, OTHERWISE KNOWN AS "THE JUNCTION CO.," IS NOT A COMMON CARRIER SUBJECT TO THE PROVISIONS OF THE ACT TO REGULATE COMMERCE, BECAUSE IT IS NOT ENGAGED IN THE TRANSPORTATION OF PASSENGERS OR PROPERTY FROM ONE STATE TO ANOTHER.

(1) It lies wholly within one state.

(2) It does not issue bills of lading.

(3) It does not deal either with the consignor or

the consignee with respect to either inbound or outbound freight.

(4) It does not receive as compensation for its services any proportion of a through rate, otherwise known as a "conventional division of rates."

(5) When it hauls with its own motive power any freight on its own tracks it receives a flat switching charge therefor irrespective of the origin or destination or character of the freight.

(6) When foreign carriers use its rails, they pay to it a fixed trackage sum per car irrespective of the origin, destination or character of the freight or of the revenue derived therefrom.

U. S. ex rel. I. C. C. v. *C. K. & S. R. Co.*, 81 Fed., 783.

Interstate Commerce Commission v. *B. Z. & C. Ry. Co.*, 77 Fed., 942.

U. S. ex rel. Interstate Commerce Commission v. *C. K. & S. R. Co.*, 81 Fed., 783.

Gracie v. *Palmer*, 8 Wheaton, 605.

4

THE RELATION OF THE JUNCTION COMPANY TO FREIGHT CARS LOADED WITH INTERSTATE COMMERCE, WHICH IT HAULS WITH ITS OWN MOTIVE POWER FROM RECEIVING TRACKS IN ILLINOIS TO UNLOADING PLATFORMS IN ILLINOIS, IS ANALOGOUS TO AND IDENTICAL WITH THE RELATIONSHIP OF A TUG BOAT TO AN INCOMING STEAMER.
A TUG BOAT IS NOT A COMMON CARRIER.

The Steamer Webb, 14 Wall., 406, 414.

The Margaret, 94 U. S., 494.

The L. P. Dayton, 120 U. S., 337.

The Propellor Burlington, 137 U. S., 386.

The J. P. Donaldson, 167 U. S., 599, 603.

5.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, OTHERWISE KNOWN AS THE "STOCK YARD CO.," IS NOT SUBJECT TO THE PROVISIONS OF SECTION 1 OF THE ACT TO REGULATE COMMERCE BECAUSE

(a) It is not a common carrier;

(b) It is not engaged in the transportation of property or passengers from any point in one state to any point either in or without a state.

Kentucky & Ind. Bridge Co. v. *L. & N. R. R. Co.*, 37 Fed., 567.

Cattle Raisers Assn. v. *Ft. W. & D. C. R. Co.*, 7 I. C. C., 513 (536).

6.

WHEN AN ACT OF CONGRESS HAS BEEN CONSTRUED BY THE COURTS AND THEREAFTER THE ACT IS AMENDED OR RE-ENACTED, AND THE AMENDMENTS DO NOT AFFECT IN ANY WAY WHATSOEVER THE PROVISIONS SO CONSTRUED, THEREAFTER THE COURTS WILL ASSUME THAT CONGRESS HAS APPROVED AND ADOPTED THE JUDICIAL INTERPRETATION PLACED UPON ITS LANGUAGE; ALSO

WHEN A STATUTE HAS BEEN OFFICIALLY INTERPRETED BY THE BODY CHARGED WITH ITS EXECUTION, AND THEREAFTER THE ACT IS AMENDED, AND THE AMENDMENTS OF CONGRESS DO NOT IN ANY RESPECT CHANGE THE PARTICULARS SO INTERPRETED, THE COURTS WILL ASSUME THAT CONGRESS HAS APPROVED AND ADOPTED SUCH INTERPRETATION IRRESPECTIVE OF WHAT THE COURTS MIGHT HAVE ORIGINALLY DETERMINED TO BE THE CORRECT INTERPRETATION.

United States v. *Mooney*, 116 U. S., 104, 106.

Kepner v. *U. S.*, 195 U. S., 100 (124).

The Abbottsford, 98 U. S., 444.

Diaz v. *U. S.*, 223 U. S., 442 (454).

Standard Oil v. *U. S.*, 221 U. S., 1 (59).

N. Y., N. H. & H. R. R. Co. v. *Interstate Commerce Commission*, 200 U. S., 361 (401-2).

Copper Queen Mining Co. v. *Arizona Board*, 206 U. S., 474, 479.

United States v. *G. Falk & Brother*, 204 U. S., 143, 152.

United States v. *Hermanos y Compania*, 209 U. S., 337.

7.

THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY, OTHERWISE KNOWN AS THE "INVESTMENT COMPANY," IS NOT SUBJECT TO THE PROVISIONS OF SECTION 1 OF THE ACT TO REGULATE CARRIERS, BECAUSE

(a) It is not a common carrier.

(b) It is not engaged in the transportation of property or passengers from any point in one state to any point, either within or without the State.

8.

IRRESPECTIVE OF WHAT THE DECISION OF THE COURT MAY BE EITHER AS TO THE "STOCK YARD COMPANY," OR AS TO "THE JUNCTION COMPANY," THE MERE FACT THAT "THE INVESTMENT COMPANY" OWNS SHARES OF STOCK OF THE TWO COMPANIES DOES NOT DESTROY ITS IDENTITY OR MERGE IT INTO THE IDENTITY OF EITHER OF THE OTHER TWO COMPANIES.

U. S. ex rel. v. *Delaware & Hudson Co.*, 213 U. S., 366.

Coal Belt Electric Ry. Co. v. *Peabody Coal Co.*, 230 Ill., 164.

9.

THE UNITED STATES COMMERCE COURT NOT ONLY HAD JURISDICTION TO DETERMINE WHETHER THE ASSAILED CONTRACT WAS OR WAS NOT UNLAWFUL, BUT IT WAS ITS DUTY TO DETERMINE SUCH QUESTION.

Elkins Act, Sec. 2.

Elkins Act, Sec. 3.

10.

WHEN THE JURISDICTION OF A COURT OF EQUITY IS INVOKED IN GOOD FAITH, THE COURT WILL DECIDE ALL OF THE QUESTIONS PRESENTED BY THE CASE, EVEN THOUGH IT DECIDES THE JURISDICTIONAL QUESTION AGAINST THE PERSON INVOKING THE JURISDICTION.

Siler v. *L. & N. R. R. Co.*, 213 U. S., 175.

Michigan R. R. Tax cases, 138 Fed., 223.

Burton v. *U. S.*, 196 U. S., 283.

Williamson v. *U. S.*, 207 U. S., 425.

Hopkins v. *Grimshaw*, 165 U. S., 342.

Ober v. *Gallagher*, 93 U. S., 199.

U. S. v. *Union Pac. Ry. Co.*, 160 U. S., 1.

Current Law, Vol. 2, pp. 623, 624.

11.

THE ASSAILED CONTRACT IS NOT ILLEGAL.

It is made for the purpose of maintaining a desirable customer at the live stock market at the Stock Yards.

(a) It is not made by a common carrier or on behalf of a common carrier with a shipper.

(b) It is not based upon the transportation of any property whatsoever.

(c) It has nothing to do with the rates charged or paid for the transportation of any property.

Willoughby v. *Chicago Junction Railways and Union Stock Yards Co.*, 50 N. J. Eq., 656; 25 Atl., 277.

12.

THE INTERSTATE COMMERCE ACT SHOULD BE INTERPRETED IN PARI MATERIA WITH THE ANTI-TRUST ACT. IT SHOULD BE HELD THAT A CONTRACT, NOT MADE BY A COMMON CARRIER SUBJECT TO THE ACT TO REGULATE COMMERCE, IS NOT PROHIBITED BY LAW IF ITS MAIN PURPOSE AND CHIEF EFFECT IS TO PROMOTE THE LAWFUL BUSINESS OF THE PARTIES MAKING IT.

Hopkins v. *United States*, 171 U. S., 578.

Bigelow v. *Calumet & Hecla Mining Co.*, 167 Fed., 704 (712), and cases there cited.

Standard Oil Co. v. *U. S.*, 221 U. S., 1.

American Tobacco Co. v. *U. S.*, 221 U. S.,

ARGUMENT FOR THE APPELLANT, CHICAGO JUNCTION RAILWAY COMPANY.

I.

THE CHICAGO JUNCTION RAILWAY COMPANY HAS NOT SUBMITTED ITSELF TO THE PROVISIONS OF THE ACT TO REGULATE COMMERCE.

There can be no doubt but that it is possible for a railroad company to so arrange its business as not to subject itself to the provisions of the Act to Regulate Commerce.

This was clearly held by this court in *Cincinnati, New Orleans & Texas Pacific Railway* v. *Interstate Commerce Commission*, 162 U. S., 184, where the court said, page 191:

> "It may be true that * * * a corporation of the State of Georgia, and whose entire road is within that State, may not be legally compelled to submit itself to the provisions of the Act of Congress, *even when carrying between points in Georgia freight that has been brought from another state.*"

The Junction Company contends that its method of doing business has brought it squarely within the possibility outlined by that decision.

Whether or not it is correct in this position depends, not upon broad generalizations and unwarranted assumptions, but upon a careful study and scrutiny of the Act, of the activities in which the company is engaged and of the judicial decisions in which the questions presented in this case have heretofore been considered.

As originally passed in 1887 the first section of

the Act to Regulate Commerce reads (for the purposes of this case) as follows:

> "That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property, wholly by railroad or partly by railroad and partly by water, when both are used, under a common control, management or arrangement for a continuous carriage or shipment, etc."

In the Act as amended in 1906 the words:

> "or partly by railroad and partly by water when both are used, under a common control, management or arrangement for a continuous carriage or shipment"

were placed in a parenthesis.

Prior to the amendment, the words: "a common control, management or arrangement," were supposed to modify and refer to the phrase; "wholly by railroad."

As the Act is now constructed, the phrase: "under a common control, management or arrangement," does not modify the words "wholly by railroad."

So far as the Junction Company is concerned, (and for the purposes of this case) the Act reads as follows:

> "The provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad from one state to another."

Let us now consider, with still further patience and detail, what it is that the Junction Company does, that justifies the assertion of the government that it is within the terms of the Act.

For a more convenient discussion of the case, the

Junction Company's business may be grouped into two great classes, to-wit:

(a) Its passive functions; and

(b) Its active functions.

1. As to its passive functions:

(a) It permits foreign carriers with their own motive power to haul over its rails through trains, for which it receives from such carriers a trackage charge per car irrespective of the origin, destination, contents of the car, or the revenue derived from the haul.

(b) It permits foreign carriers with their own motive power to haul livestock from points outside of Illinois destined to commission men doing business at or near the Yards, and it receives from the trunk line carrier for such use of such tracks a trackage charge per car irrespective of the origin, the contents of the car, or the revenue derived from the haul.

2. As to its active functions.

(a) It switches from points in Illinois on its own rails to other points in Illinois on its own rails, either outgoing or incoming dead freight, for a fixed sum per car irrespective of the origin, or the destination, or the commodity or of the revenue derived therefrom. This switching charge is paid to it by the Trunk Line carrier who has engaged to make the haul, and the Junction Company does not know the shipper or consignee in the transaction.

(Page 16, *ante*.)

(b) It frequently weighs cars, for which it is paid

by the persons desiring the service, whether they be carriers, shippers or consignees. (Page 22, *ante.*)

(c) It distributes what is called "L. C. L. dead freight." (Page 18, *ante.*)

(d) It switches, with its own motive power, cars loaded with horses. (Page 20, *ante.*)

(e) Occasionally, as the agent of the trunk line carrier which contracts to make the haul, it receives prepaid L. C. L. freight destined to points beyond the State of Illinois. In such instances it issues a receipt in the name of the trunk line carrier as its agent. (Page 18, *ante.*)

What is it in these various passive and active functions that justifies the conclusion that the Junction Company is a common carrier engaged in the transportation of property from one state or territory to another?

Surely, its passive functions do not permit of such a conclusion.

The mere letting of tracks to be used by an interstate carrier does not make the lessor an interstate carrier. The lessee may be a common carrier, but the lessor does not by reason thereof have impressed upon it the functions of a common carrier.

It does not perform any of the functions of the carrier.

As was said by this court in *Gracie* v. *Palmer*, 8 Wheat., 605 (632, 633):

> "The carrier may hire his vehicle or his team or his servant for the purposes of transportation, or he may undertake to employ them

himself in the act of transporting the goods of another. *It is in the latter case, only, that he assumes the liabilities and acquires the rights of a common carrier.*"

We may, therefore, safely conclude that so far as the so-called "*passive functions*" of the Junction Company are concerned, it is not a common carrier engaged in interstate commerce between the several states.

As to its active functions as distinguished from its passive functions, the Junction Company is nothing more than a tug. It takes the car in Illinois loaded with freight and hauls it to another point in Illinois, in the same way that a tug takes a loaded steamer and hauls it to its berth. The "Trunk Line carrier" contracts with or (in the language of the Act) "engages" to make the through haul for the shipper. The Trunk Line carrier then employs the Junction Company to make the switch and pays the Junction Company for the local service.

The Junction Company does not itself engage to transport freight originating outside of Illinois to any point in Illinois, or *vice versa*. What it engages to do is to haul loaded or empty cars delivered to it for that purpose for a fixed sum over its own rails. Such services by tugs do not constitute tugs as common carriers engaged in interstate commerce. Likewise, such services do not make of the Junction Company a common carrier engaged in interstate commerce.

In the case of *The J. P. Donaldson*, 167 U. S., 599, the court said (603):

"A general ship carrying goods for hire, whether employed in internal, in coasting or in

foreign commerce, is a common carrier; and the ship and her owners, in the absence of a valid agreement to the contrary, are liable to the owners of the goods carried as insurers against all losses, excepting only such irresistible causes as the act of God and public enemies. * * * *But a tug and her owners are subject to no such liability to the owners of the vessels towed, or of the cargoes on board of them.* * * *Unlike the case of common carriers,* damage sustained by the tow does not ordinarily raise the presumption that the tug has been in fault."

Authorities under Point 5 supra.

4. Decisions on the subject.

We have been arguing this case up to the present time as if it were a case of first impression. But as a matter of fact the courts up to the time of the decision by the Commerce Court in this case had been unanimous in holding that a corporation rendering services, such as those rendered by the Junction Company, was not a common carrier engaged in interstate commerce within the meaning of Sections 1 and 6 of the Act to Regulate Commerce.

The question first came before the Circuit Court of the 6th Circuit in 1889, two years after the passage of the Act. In that case *the Kentucky and Indiana Bridge Company*, a corporation created by the laws of the two states, owned and operated a bridge across the Ohio river. It was engaged in the following business:

(a) It actually carried interstate passengers across the Ohio river. In this respect it was doing a business which the Junction Company is not doing and has never done.

(b) It permitted interstate carriers to use its rails for the purpose of hauling with the motive power of such interstate carriers freight going from one state to another. For this service it was paid by the interstate carriers a fixed sum per car. As to this, it was performing the identical service which the Junction Company performs except that the bridge and rails of the bridge actually ran from one state to another.

(c) It switched cars wholly in the City of Louisville from points on its own rails to other points on its own rails, for which it received a fixed sum per car irrespective of the origin, destination or commodity contained in the car. In this respect it was engaged in performing one of the activities in which the Junction Company is engaged.

(d) It also solicited freight as the agent for the trunk line carriers under an arrangement with the trunk line carriers that if it obtained such freight the trunk line carriers would furnish cars to haul the same, and would pay to the Bridge Company the regular transfer sum per car.

Claiming that it was a common carrier engaged in interstate commerce of freight because of the services performed by it in Subdivisions "b," "c," and "d," it filed its petition in the United States Circuit Court and sought an injunction restraining the Louisville and Nashville Railroad Company from violating an order previously entered by the Commission, and enjoining upon it the duty of exchanging traffic with the Bridge Company as a carrier.

Kentucky & Indiana Bridge Co. v. *L. & N. R. Co.*, 37 Fed., 567.

Judge Jackson held that with respect to the activities mentioned in Subdivision "b" *supra*, the railway *companies transporting the goods were the common carriers, and not the Bridge Company which in fact owned the rails.*

The court held because of the fact that the Bridge Company leased its tracks to interstate carriers it could not as an interstate carrier invoke the provisions of the Act to Regulate Commerce to compel the railroad companies to transact business with or through it.

This holding of the court directly applies to and supports our position with respect to the legal conclusion flowing from the "passive functions" of the Junction Company.

Judge Jackson said (617):

> "Again it is perfectly clear that the petitioner cannot be properly regarded as a common carrier of the interstate freight transported over its bridge by the Ohio & Mississippi Railway Company, for the obvious reason that said bridge and approaches thereto to and from the yard and depot of the Ohio & Mississippi Railway Company at Hardin and Bank streets, in the City of Louisville, under the terms of the contract of September 29, 1886, between petitioner and said railway company, and under the provision of Section 1 of the Act to Regulate Commerce, constitute a part and portion of the Ohio & Mississippi Railway Company's lines, over which said railway performs its own transportation service. The provision of section 1, referred to, provides that "the term 'railroads,' as used in this act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether

> owned or operated under a contract, agreement, or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage.' Having, by contract with the petitioner, not only acquired the right to use said bridge and approaches, but secured for its engines, cars and trains a preference over all other railroads in such use, down to its southern terminus in the City of Louisville, and being in the actual use thereof under said contract, during the period covered by the present controversy, the Ohio & Mississippi Railway Company must, for the time being, be regarded as the owner or operator of said bridge and approaches, under the above provision of law, as to all freights transported by said company; and the through traffic which it carries over said bridge to its yard and depot in Louisville is in no sense either handled or moved by petitioner as a common carrier. In thus making the bridge and approaches a part or portion of the line of the railroad which uses or operates it under contract, there is a clear implication that the Act to Regulate Commerce did not intend to include such bridges as independent carriers, or 'railroads' coming within the purview of the law."

The same case is interesting as applied to the active functions of the Junction Company. The complaint was made by the Bridge Company that it was a common carrier because it switched the loaded freight cars at so much per car, but upon this matter Judge Jackson said (p. 617):

Proceeding to a discussion of this question, Judge Jackson said (p. 618):

> "The service performed was wholly within the limits of Louisville. The charge for that service was not made for the transportation of the goods contained in the car, but simply for

switching the car itself. Upon what principle is petitioner to be held or regarded as a common carrier, either of this car or of its contents? It was transferred under the obligation of its contract with the Ohio & Mississippi Railway Company to perform the service for one dollar. It was under no public duty to do such switching for any common carrier. It could not be required, aside from its agreement, to perform such service; and in performing the same it assumed none of the responsibilities of a common carrier, but only those of a switchman moving the vehicle in which the Ohio & Mississippi Railway was transporting its traffic. In respect to cars or traffic thus handled, petitioner can only be regarded as a switchman or transfer company. In the performance of such service it is no more a common carrier of interstate commerce or traffic, within the provisions of the law, than a city transfer company which checks a passenger's baggage at the hotel where it is received, and carries it, for an agreed compensation, to the station of the railroad over which it is to be transported into another state. The Act to Regulate Commerce does not extend to such agencies, or embrace such transfer companies, nor can they invoke the provisions of said act in their behalf, or in behalf of those whom they thus serve."

Next, taking up the significance of the fact that the Bridge Company acted as agent for the railroads in soliciting freight and in moving such freight in the cars of the railroads from the yards or freight station to the lines of the railroads, Judge Jackson said (p. 619):

> "It is equally certain that petitioner is not a common carrier of that class of interstate freight which it solicits for railroads, either under express or implied agreement, and for which such roads furnished it with cars, for the transfer

> of which over its bridge petitioner charged and collected bridge-tolls only. The law does not require respondent or any other railroad company to keep up such an arrangement with petitioner as to continue to supply it with cars in order to obtain such traffic, thus making petitioner its soliciting or collecting agent in order to protect its interest in securing tolls for its bridge."

Judge Jackson's summary is entirely applicable to the case at bar, and is as follows (p. 615):

> "* * * That petitioner is not, in law or in fact, a common carrier of property or freights, within the true meaning of section 1 of the Act to Regulate Commerce, and that in respect to freight which it offers or seeks to have interchanged with respondent at said Seventh and Magnolia connection it is only a transfer company or agency engaged in performing a switching service, for which it demands and receives from the party for whom such service is rendered, not traffic rates on the freight transported or transferred, but simply a switching charge for the shifting of cars, loaded or empty, from one line or connection to another."

The United States Commerce Court in attempting to distinguish the Bridge Company case called attention to the fact that under its charter the Bridge Company was not incorporated as a common carrier.

There is, however, no merit in that attempted distinction.

Judge Jackson clearly pointed out that it was the activities of the Bridge Company which would determine whether it was or was not a common carrier. He pointed out what we have already said, *supra*, to-wit:

That the Bridge Company *was a common carrier with respect to interstate passengers,* but the Bridge Company in the case before him was not claiming any relief in court with respect to its interstate passenger business and, of course, it is conceded in the case at bar that the Junction Company does not haul any passengers whatsoever, and does not with respect to any of its activities pass over *or contract to pass over* or across the state line.

Judge Jackson gave as an illustration certain activities connected with interstate commerce which he pointed out were not within the meaning of the Act, and did not bring persons engaged therein within the provisions of Section 1 or 6. One of these illustrations was the business of transfer companies in large cities.

Later this court, in *Pennsylvania* v. *Knight*, 192 U. S., 28, had the question whether or not such transfer companies were engaged in interstate commerce before it for decision, and reached the same conclusion as Judge Jackson.

The Bridge Company case has in fact been cited with approval by this court on other points many times.

It will be observed that in the bridge case *the Bridge Company endeavored to get the court to decree that it was a common carrier engaged in interstate commerce, but the court held against the Bridge Company.*

The next case involving substantially the same state of facts is the case of *Interstate Commerce Commission* v. *B. Z. & C. Ry. Co.*, 77 Fed., 942. In

this case the Interstate Commerce Commission filed its petition to require the defendant railroad company to file its tariffs as required by Section 6 of the Act to Regulate Commerce. The facts with respect to the operations of the defendant company are stated in the opinion as follows (p. 942):

> "The contention is that the company is not subject to the Interstate Commerce Act. Its line extends from Zanesville to Bellaire. It appears from the testimony of the receiver of the road and its auditor that, although a common carrier of freight, including freight marked and destined to points beyond its terminus, and in many cases to points beyond the state lines of Ohio, it never issues a bill of lading to any point beyond its own lines. Upon the bill of lading the marks upon the freight, the name of the consignee, and the destination, appear, but the bill of lading itself is always limitel to the line of the company's road. It also appears that its charges upon freight destined for points beyond its own terminus are paid as advance charges in many instances by the railroad company which takes the freight to its final destination.
>
> Further, it appears that the company receives no freight under through bills of lading; that is to say, if freight comes from another carrier destined to a point on its own line, it invariably issues its own bill of lading, and refuses to receive such freight upon any through bill issued by another company, although it pays advance charges when necessary, and collects them from the consignee.
>
> * * * * *
>
> My opinion, therefore, is that the defendant company is not within the purview of the interstate commerce act, and cannot be compelled to make the report called for. I have no doubt that Congress would have the power to amend the

act so as to require this and other companies occupying like relations to file reports, inasmuch as they all carry freight destined for points beyond the state in which the road is located. But the act is not so framed as to include the defendant company, and, while it is a proper act of courtesy for the defendant company to furnish annual copies of its report to the state commissioner of railroads and telegraphs, it cannot be forced to make such reports. The provision of the supplemental act is to be strictly construed, for the reason that section 6 enacts that the failure or refusal to make report shall operate as a forfeiture in each case in a sum of not less than $1,000 nor more than $5,000, to be recovered by the attorney general of the United States in the name and for the use and benefit of the United States. The act is therefore penal in its nature. The defendant is not liable for the costs."

The next case before the courts involving the same question is the case of the *United States ex rel. Interstate Commerce Commission* v. *C. K. & S. R. Co.*, 81 Fed., 783. In this case the United States filed a petition for mandamus to compel the defendant company to file an annual report with the Interstate Commerce Commission under the provisions of the Interstate Commerce Act. The opinion of the court is as follows:

"In this case I am of the opinion that the question is not so wide as it seems to be assumed or contended in the briefs and argument for the Commission; that is to say, it is not whether a railway carrier operating a line wholly in a single state, which 'hauls traffic in process of transportation to or from another state,' is subject to the power of Congress to regulate commerce, but is whether by the interstate commerce act it is, by that test alone, made subject to its regulations. The

question here, therefore, must be determined by the provisions of that act. It appears from the answer and amended answer, which are taken by the parties as showing the facts of the case, that both the termini of the defendant's railway are within the State of Michigan, that it transports freight, whether shipped from its line for destinations out of the state or from abroad to stations on its own line, upon local bills of lading under a special contract of carriage limited to its own line. It does not do such business upon through rates, which it divides with other carriers, or assume any obligation to or for them in respect of such carriage; and the delivery which it makes to other carriers, and its reception from them of freight, is not substantially different from a delivery to or reception from any consignee or consignor. If it is possible for a domestic railroad company, located and doing business wholly within a state, to so limit its business as not to be embraced by the act as one engaged in intestate commerce, it would seem as though it were done in this instance. Without going into a discussion of the general subject, it appears to me that the case is covered by what was said by the Supreme Court of the United States in *Cincinnati, N. O. & T. P. R. Co.* v. *Interstate Commerce Commission*, 162 U. S., 184, 16 Sup. Ct., 700, and by the decision of Judge Sage in *Interstate Commerce Commission* v. *Bellaire, Z. & C. Ry. Co.*, 77 Fed., 942. The result is that the defendant is not subject to the requirement of the commission to make report to it of its business under section 20 of the interstate commerce act, and that the motion for a mandamus to compel it to do so must be denied."

So far as we are advised, these are the only three cases in which the identical question presented for decision here has come before the courts. From them it appears that the Circuit Courts have been unanimous in holding that a carrier engaged in the activ-

ities in which the Junction Company is engaged, is not a common carrier engaged in interstate commerce within the meaning of that phrase as used in Section 1 of the Act to Regulate Commerce.

The first of these cases was decided two years after the Interstate Commerce Act was passed. The second and third cases were each decided ten years after the Act was passed.

Since the rendition of these three decisions, the Interstate Commerce Act has been amended many times*

But in no one of these cases did Congress amend the Act with respect to the questions determined in the three decisions.

In other words, Congress acquiesced in the interpretation placed by the courts upon the meaning of the first section as originally drafted.

It is a rule of great force, in the interpretation of statutes, *that after an act of congress has been authoritatively construed by a court and is amended or re-enacted* after such judicial construction *without affecting in any way the provisions so construed, the* courts will assume thereafter that congress has approved and adopted the judicial construction placed upon its language.

Authorities Point 6 of the brief.

The appellant, the Junction Company, invokes this rule of statutory interpretation in this case and insists that under it there is no escape from the conclusion that the Junction Company is not engaged in

*The Interstate Commerce Act was amended on March 2, 1899, Feb. 10, 1901, Feb. 8, 1895, June 29, 1906, April 13, 1908, Feb. 25, 1909 and June 18, 1910.

interstate commerce within the meaning of Section 1 of the Act to Regulate Commerce.

5. Decisions under the safety appliance act.

The government, in its argument before the United States Commerce Court, relied upon the reasoning of some of the lower courts in construing what is known as the "Safety Appliance Act."

But it will not do to say that the reasoning of the courts in cases arising under the "Safety Appliance Act" is applicable to the question presented here. The slightest reflection serves to distinguish the Safety Appliance Act and the Interstate Commerce Act.

The Interstate Commerce Act begins:

> "The provisions of this Act shall apply * * * to any common carrier * * * engaged in the transportation of passengers or property wholly by railroad from one state or territory to another."

The provisions of the Safety Appliance Act are very much broader than are the provisions of the Act to Regulate Commerce. In the Employers' Liability cases, 207 U. S., 503, it was held that the Safety Appliance Act should be interpreted as if it read as follows:

> "No common carrier shall haul a car carrying interstate commerce under any circumstances which is not equipped as hereinafter provided."

Judge Sanborn for the Circuit Court of Appeals, Eighth Circuit, pointed out the difference between these two acts of Congress:

> "It does not follow from the facts that the interstate commerce act was first passed, and

that it regulates commerce among the states, and declares that its provisions shall apply to the members of a certain class of carriers engaged therein, that the Sherman Anti-Trust Act, the safety appliance acts, and other subsequent acts regulating commerce apply to the members of that class only, in the face of the positive declarations of the latter acts that they shall govern other parties and other branches of commerce. The subject of the first act was the contracts, the rates of transportation of articles of interstate commerce; the subject of the safety appliance acts was the construction of the vehicles, the cars, and engines which carry that commerce. The evils the former was passed to remedy were discrimination and favoritism in contracts and rates of carriage; the evils the latter was enacted to diminish were injuries to the employes of carriers by the use of dangerous cars and engines. The remedy for the mischiefs which induced the passage of the former act was equality of contracts and rates of transportation; the remedy for the evils at which the latter act was leveled was the equipment of cars and engines with automatic couplers. Neither in their subjects, in the mischiefs they were enacted to remove, in the remedies required, nor in the remedies provided, do these acts relate to similar matters, and the rule that the words or terms of acts in *pari materia* should have similar interpretations ought not to govern their constructions."

The Safety Appliance Act prohibits any carrier, *whether engaged in interstate commerce or not*, from hauling interstate commerce in any car not equipped as required by Congress. The Safety Appliance Act deals with the instrumentalities in which interstate commerce is carried.

The Interstate Commerce Act is a regulation of a corporation engaged in interstate commerce. It is obvious that a person not engaged in interstate com-

merce might be prohibited by law from moving equipment containing interstate commerce not equipped as provided by the Safety Appliance Act.

Indeed, the phrase "trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce" as found in the Act effective September 1, 1903, has been construed as if there were a comma after the word "railroad."

The phrase "Engaged in interstate commerce" has been held to modify not the word "railroad," but the preceding words, to-wit, "trains, locomotives, tenders, cars and similar vehicles."

See United States v. *Erie*, 166 Fed., 353, 355.

United States v. *Chicago & Northwestern Railway Co.*, 157 Fed., 616, 618.

The appellant, the Junction Company, insists that if it be possible for a common carrier to so arrange its business as not to bring itself within the provisions and obligations of Section 1 of the Act to Regulate Commerce, that it has done so. This court has held that a common carrier may not be compelled to subject itself to the provisions of the Act except by its own consent.

Cincinnati, New Orleans & Texas Pacific Ry. v. *Interstate Commerce Commission*, *supra*.

The Junction Company, therefore, respectfully insists that the decree entered against it on this point should be reversed with directions to the United States Commerce Court to dismiss the case against it for want of equity.

ARGUMENT FOR THE APPELLEES, THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, OTHERWISE KNOWN AS "THE STOCK YARD COMPANY," AND THE CHICAGO JUNCTION RAILWAYS AND THE UNION STOCK YARDS COMPANY, OTHERWISE KNOWN AS "THE INVESTMENT COMPANY."

I.

THE UNION STOCK YARD & TRANSIT COMPANY OF CHICAGO IS NOT A COMMON CARRIER ENGAGED IN INTERSTATE COMMERCE AND IS NOT SUBJECT TO THE PROVISIONS OF SECTION 1 OR OF SECTION 6 OF THE ACT TO REGULATE COMMERCE.

1. *Its Charter.*

We have searched in vain for any facts connected with the activities of the Stock Yard Company which would furnish the foundation for the conclusion that this Company is a common carrier within the meaning of Section 1 of the Act.

From whatever point of view it may be considered no such conclusion seems possible. Under its charter the company was authorized:

> "To locate, construct and maintain all necessary yards and enclosures, buildings, structures and railway lines and tracks * * * for the reception and safe keeping * * * delivery and transfer of cattle and live stock * * * and for the accommodation of the business of a general union stock yard for cattle and live stock."

True it is the Company was directed by Section 3 of the charter to construct a railway so as to connect the stock yards with the *tracks of all the railroads which terminate in Chicago.*

But, no duty was imposed upon it to operate these tracks. No power was granted to the company to conduct a general railroad business. On the contrary by Section 11 it was prohibited from maintaining or operating a railroad for the conveyance of passengers or freight in the City of Chicago. On the tracks it did construct, however, it was given the power:

> "To transport between said railroads (referring to the trunk lines) to the cattle yards * * * live stock and persons accompanying the same to and from said yards, and to transport and *allow* to be transported between the railroads freight and property of every kind as well as stock and cattle."

It is very clear that the Legislature did not intend to create it as a general railroad business or to impose upon it the duty of entering into the business of a common carrier. The entire purpose of the Act was to provide for the creation of a stock yards with railroad tracks and other facilities necessary to make the same accessible to all the railroads entering the City of Chicago. The Company's railroad operations were strictly confined to a specific territory proximate to the City of Chicago, and it was expressly prohibited from making any contract, or having any agreement with any railroad company to receive cattle, hogs or live stock to the exclusion of any other person or corporation having a stock yards in proximity to said city.

Charter Section 11—*Rec.* 26.

Any effort on the part of the railroad company to engage in the general business of an interstate rail-

road or *to conduct railroad operations beyond the State of Illinois, or beyond the space fixed in its charter would have been ultra vires of the corporation.*

Not only under the charter was the duty not imposed upon the Company to operate its railroad company, but the express power was conferred upon it to *allow* the tracks to be used by others. In other words it could lease, or otherwise by contract provide for their use and operation.

This brief resume of its charter leads but to one conclusion, to wit, that the company was not incorporated for the purpose of becoming a common carrier; that the duty was not imposed upon it of becoming a common carrier; that it had no power under its charter to engage in interstate commerce, and that the sole purpose for the construction of its tracks was to furnish facilities by which the trunk lines entering into the city could obtain railroad access to the proposed Stock Yard Company.

2. *The activities of the Stock Yard Company.*

At a time long prior to the date when interstate commerce litigation occupied its present conspicuous position in the public eye and before the courts, the Stock Yard Company disposed of its tracks.

Under the pertinent allegations of the bill and the disclosures contained in the answer it is quite clear that the Stock Yard Company is not engaged now and was not on the date of the filing of the bill engaged in any transportation whatsoever. It does

not hold itself out as being a common carrier in any respect whatsoever. Its business is as follows:

(a) It unloads live stock shipped to commission merchants for which it receives a fixed compensation per car.

(b) When live stock is sold on the hoof to be shipped from Chicago it loads such live stock into outgoing cars, for which it is paid a fixed sum per car.

(c) It carries on the business of feeding and watering stock. For this it is paid either by some carrier or some owner.

(d) If any partitions are needed in cattle cars which happen to be at the yards the Stock Yard Company will install them if the owner wishes it done and will pay therefor.

In none of these activities does it perform the service of carriage. In none of them does it undertake to perform such service or agree with any owner or shipper to have such service performed by any other person, firm or corporation.

The bill alleges and the answer alleges that *interstate carriers* make arrangements for the carriage and delivery of their freight with the shippers and consignees *through agents employed by the interstate carriers located at or near the* stock yards. With these arrangements the Stock Yard Company has no part and no interest.

Up to the present time the authorities without exception have held a company engaged in the business which this appellee in the case at bar is now transacting is not a common carrier in any sense of

the word. It was so held in *Cotting* v. *Kansas City Stock Yards Company*, 82 Fed., 839 (842)*.

In *Union Stock Yards Company of Omaha* v. *United States*, 169 Fed., 404, while considering whether or not the Union Stock Yards Company of Omaha was liable for a violation of the Federal Safety Appliance Act, the Circuit Court of Appeals through Mr. Justice Van Devanter held that such activities as those in which the Stock Yard Company is engaged did not make it a common carrier.

See, also:

Hopkins v. *United States*, 171 U. S., 578.
United States v. *E. C. Knight Company*, 156 U. S., 1.

The whole argument of the Government on this branch of the case amounts to this:

> "If any person, firm or corporation is employed by an interstate carrier to do any local service for such interstate carrier in connection with the business of any interstate carrier, then such other person, firm or corporation becomes *ipso facto* a common carrier subject to the provisions of Section 1 of the Act to Regulate Commerce."

If this proposition be true then it follows that if a farmer is employed by a railroad to unload cattle for rest and water and to reload them that he, therefore, becomes subject to the provisions of the Act to Regulate Commerce, and that the duty is imposed upon him to file tariffs and make reports in accordance with the provisions of the Act.

It is respectfully submitted that a reasonable in-

*This case was later reversed on another ground.

terpretation of the Act to Regulate Commerce leads to no such absurdity.

"To state the proposition is to refute it."

As a matter of fact the Interstate Commerce Commission Act determined years ago that the appellee in the case at bar, which it now claims *is a* common carrier, *was not* a common carrier.

> *Cattle Raisers Association* v. *Fort Worth & D. C. R. Co.*, 7 I. C. C., 513 (536-538).

This case came before the Commission in 1897, prior to the time when the Stock Yard Company had divested itself of its tracks. At that time the Stock Yard Company was then engaged in it's general stock yards and hotel business, and also was operating the railroad tracks constructed under its charter.

Referring to the activities of the Stock Yard Company other than its operation of the railroad tracks, the Commission said:

> "The Union Stock Yards & Transit Company alleges that, in respect of the matters involved in this proceeding, it is not a common carrier subject to the jurisdiction of the Act to Regulate Commerce and moves to be dismissed.
>
> That Company is a corporation under the laws of the State of Illinois. * * * In accordance with this (its) act of incorporation the company has constructed its stock yards and its lines of railway connecting the tracks of the various defendants with those of the stock yards. It may by virtue of its corporate power either lease these connecting tracks or furnish the motive power and conduct the transportation of various kinds of

freight over these tracks to and from the stock yards. * * * In respect to live stock, however, it imposes a trackage charge, and the defendants in all cases by their own motive power and with their own crews transport the cars to and from the stock yards. Apparently at the stock yards the work of unloading is done by the Stock Yard & Transit Company.

Upon this state of facts it is difficult to see how the Union Stock Yards & Transit Company can be held subject to the Act in this proceeding. The Act provides that it shall apply 'to any common carrier or carriers engaged in the transportation of passengers or property.' *The Union Stock Yards & Transit Company is not in any sense of that word a carrier as to this freight.* It publishes no tariff; it issues no way bill; it has nothing to do with the transportation of this property. *It possesses no incident and discharges no function of a common carrier in respect to this traffic.*"

See, also:

Kentucky & Indiana Bridge Co. v. Louisville & N. R. Co., supra.

This decision of the Commission was rendered in 1898. Since that time as has been shown, *supra*, the Interstate Commerce Act has been amended five times, but no effort has been made on the part of Congress to modify the law or to change the language of the statute so as to enlarge it.

This being the decision of the Commission with respect to the identical company now before the court, the language of this court in *N. Y., New Haven & H. R. R. Co. v. Interstate Commerce Commission*, 200 U. S., 361, is peculiarly apt (p. 401):

"Now, without at all intimating that as an

original question we would concur in the view expressed in the case last cited, that to have applied the act to regulate commerce, under proper rules and regulations for the segregation of the business of producing, selling and transporting as presented in the Haddock and Coxe cases, would have been confiscatory, and without reviewing the rulings made by the Interstate Commerce Commission in those cases and adhered to by that body during the many years which have followed those decisions, we *concede that the interpretation given by the Commission in those cases to the act to regulate commerce is now binding, and as restricted to the precise conditions which were passed on in the cases* referred to, must be applied to all *strictly identical cases in the future, at least until Congress has legislated on the subject.* We make this concession, because we think we are constrained to so do, in consequence of the familiar rule that a *construction made by the body charged with the enforcement of a statute, which construction has long obtained in practical execution, and has been impliedly sanctioned by the re-enactment of the statute, without alteration in the particulars construed, when not plainly erroneous, must be treated as read into the statute.*"

See also:

Authorities under point 7 of our brief.

Neither will it do to say that if the Stock Yard Company is not a common carrier the purpose of the Act to Regulate Commerce can thereby be defeated. The mere fact that a sub-contractor of an interstate carrier employed by it to do a local service for such carrier is not thereby subject to the provisions of the Act to Regulate Commerce, does not for a moment limit or curtail the power of the

Commission over the interstate carrier itself. If the interstate carrier should make a separate charge for the local service and it is unreasonable the Commission can control it as it has done in many cases.

If the interstate carrier should make a lump charge which would include both the transportation and the local service, and the same is too large or unreasonably high, the Commission can control it.

But the appellee respectfully submits that there is no authority for the proposition that one who does a local service for an interstate carrier thereby becomes himself an interstate carrier subject to the provisions of the Act to Regulate Commerce.

3. *As to the Stock Yard Company's Ownership of railroad tracks:*

Upon the hearing in the United States Commerce Court, however, it was urged that because of the fact that the Stock Yard Company had originally constructed some railroad track and was still the owner, though not the operator of the tracks and because of the further fact that over such tracks interstate commerce was now moved, that therefore, the Stock Yard Company was a common carrier engaged in interstate commerce within the meaning of Paragraph 1.

The appellee submits that the mere fact of the ownership of property which is used by others for railroad purposes, or for the purpose of common carrier, does not make of the owner himself a common carrier.

A common carrier has been defined by Mr. Justice Clifford in *The Propeller Niagara* v. *Cordes, et al.*, 21 How., 7, at page 22,

> "As one who undertakes for hire to transport the goods of those who may choose to employ him from place to place. He is in general bound to take the goods of all who offer."

As Justice Johnson said in 8 Wheat., 605, 632-3:

> "The carrier may hire his vehicle, or his team, or his servant, for the purpose of transportation, or he may undertake to employ them himself in the act of transporting goods of another. *It is in the latter case only, that he assumes the liabilities, and acquires the rights of a common carrier.*"

The decision of Judge Jackson in *Kentucky & Indiana Bridge Co.* case, *supra*, is also quite apt as applied to the contentions made by the Stock Yard Company.

But why enlarge upon this situation?

At common law the mere ownership of railroad tracks did not make the owner thereof a common carrier.

The Act to Regulate Commerce does not declare that the owner of railroad tracks is thereby a common carrier.

The charter of the appellee did not impose the duty upon the appellee, the Stock Yard Company, of becoming a common carrier.

The activities in which it is engaged are not the activities of a common carrier.

It does not contract to perform the obligations of a common carrier.

It does not come within the definition of the phrase "common carrier" as defined by any reputable authority.

Words and Phrases Judicially Defined, Vol. 2, page 1313, *seq.*

It, therefore, respectfully submits that it is not a common carrier within the meaning of Section 1 of the Act to Regulate Commerce, and is not subject to its provisions or to the provision of Section 6.

II.

THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY, OTHERWISE KNOWN AS THE "INVESTMENT COMPANY" IS NOT A COMMON CARRIER WITHIN THE MEANING OF SECTION 1 OF THE ACT TO REGULATE COMMERCE.

It is very difficult to imagine upon what theory the Government insists that the Investment Company is within the jurisdiction of Section 1, and therefore of Section 6 of the Act. The only connection between the Investment Company and the Stock Yard Company, and the Junction Company is that the Investment Company owns all of the stock of the Junction Company and a large part of the stock of the Stock Yard Company.

If the court should hold that neither the Junction Company or the Stock Yard Company is a common carrier within the meaning of Section 1 of the Act to Regulate Commerce then it necessarily follows

that there is no case on this point against the Investment Company.

If on the other hand it be held that either or both the Junction Company and the Stock Yard Company are common carriers within the meaning of Section 1 of the Act, it still does not follow that the Investment Company has any of the attributes or characteristics of a common carrier.

It is not claimed in the bill of complaint that its affairs are so intermingled with the affairs of the operating companies that it is in fact an operating company, or that it as a holding company cannot be distinguished from an operating company.

It is not shown that it interferes in any way, shape or manner with the operations of either of the companies in which it owns securities to any greater extent than any stockholder may be said to interfere by the mere casting of his vote.

It does not own the property of either of the companies.

It has not destroyed their identity.

It is simply a stockholder, nothing more and nothing less.

It does not hold itself out as a common carrier. It has no relation or connection legally or otherwise with the transportation of freight, or with contracts of shipment, or with the operation of railroad tracks, or the stock yard pens.

If the Government seriously argues that the Investment Company is a common carrier, the answer to its contention has been so conclusively stated by

the court itself that nothing further need be said than to cite the case:

Authorities under Point 9 of our Brief.

III.

THE QUESTION AS TO WHETHER OR NOT THE STOCK YARD COMPANY SHOULD BE REQUIRED TO FILE REPORTS UNDER SECTION 20 OF THE ACT IS NOT BEFORE THE COURT.

It is unnecessary to consider in this case whether or not the Union Stock Yard and Transit Company of Chicago is the owner of a railroad engaged in interstate commerce within the meaning of that phrase as used in Section 20 of the Act to Regulate Commerce, because it does not appear from the bill of complaint that the Commission has ever required, called upon, or asked it to make a report. The duty is not imposed even upon a carrier by statute to make such report in the absence of an order from the Commission.

We, therefore, do not propose to discuss this question at this time except to say that it is the position of the Stock Yard Company that Section 20 does not require reports from the mere owner of railroad tracks which happen to be used by some other person, firm or corporation in interstate commerce. Section 20 as we interpret it requires reports only from owners engaged in interstate commerce.

A railroad in and of itself cannot be engaged in interstate commerce. Railroads as such are not engaged in interstate commerce, or in any kind of commerce. Railroads may be used or operated by

persons, firms or corporations which are engaged in interstate commerce.

The phrase as used in Section 20 "engaged in interstate commerce" unquestionably modifies the word "owner," and not the word "railroad." If it should be construed as modifying the word "railroad" it would be an absurdity and a violation of the plain meaning of the English language.

IV.

THE CONTRACT BETWEEN THE STOCK YARD COMPANY AS PRINCIPAL AND THE INVESTMENT COMPANY AS GUARANTOR AND THE PFAELZERS IS NOT ILLEGAL AND THE CONSUMMATION OF THE SAME SHOULD NOT BE RESTRAINED.

(1) THE JURISDICTIONAL QUESTION.

At the threshold of this branch of the case, however, we are met by the decision of the United States Commerce Court to the effect that it had no jurisdiction to determine the questions submitted.

We will, therefore, consider this question of jurisdiction before proceeding to discuss the legality of the contract.

The Government by its bill of complaint asserted that the United States Commerce Court did have the power to determine the legality of the proposed contract, and asked to have it restrained.

The appellees did not question the jurisdiction of the court in the premises.

It is not assailed by any pleading on file. The lack of jurisdiction was a question raised by the judges of the Commerce Court themselves.

Indeed, in view of the fact that a question had been raised as to the legality of its proposed contract, the Stock Yard Company was so anxious to have it determined one way or the other, that when the court refused to decide the question upon the ground of lack of jurisdiction, the Stock Yard Company filed a petition for a rehearing.

In this court neither of the appellees question the jurisdiction. On the contrary, they insist that the Commerce Court and this court both have jurisdiction to determine the legality of the proposed contract. This follows for the following reasons:

It is provided by Section 2 of the Elkins Act, as follows:

> "That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce * * * it shall be lawful to include as parties, *in addition to the carrier*, all persons interested or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against *such additional parties* in the same manner, and to the same extent, as are or shall be authorized by law with respect to carriers."

Under Section 2 of the Act if the Government in good faith files a bill against one alleged to be a common carrier, other corporations and persons may be joined as parties defendant, and that when once joined the court has the authority to decide every question raised in the case.

The proceeding is analogous to those proceedings wherein litigation is begun in a Fed-

eral Court involving other questions besides the question of jurisdiction. In such cases even though the court decides the jurisdictional question against the party invoking the jurisdiction, nevertheless if the jurisdiction is sought in good faith, the court will decide all of the other questions upon their merits.

Authorities under Point 10 *of our Brief.*

In this case the appellees have not assailed, and do not assail in any respect the good faith of the Government in charging that the Stock Yard Company is a common carrier.

Again under Section 3 of the Elkins Act it is provided:

> "That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic * * * at less than the published rates on file or *is committing any discriminations* forbidden by law * * * a petition may be presented alleging such facts to the Circuit Court of the United States sitting in equity. * * * Whereupon it shall be the duty of the court summarily to inquire into the circumstances * * * and without formal pleadings * * * to make *such other persons or corporations* parties thereto as the court may deem necessary * * * and said court shall enforce an observance of the published tariffs or direct and *require a discontinuance of such discrimination by proper orders * * * which * * * may be enforceable as well against the parties interested in the traffic as against the carrier.* * * *"*

Here again the appellees insist that when a suit is filed in equity by the Commission charging a cer-

tain specific defendant as being a common carrier and alleging that it is indulging in illegal practices the court may require other persons to be made party defendants summarily, and then restrain such other persons from continuing their illegal acts.

Indeed, it is a cardinal principle of equity jurisprudence that when a court of equity has jurisdiction of a suit brought in good faith for any purpose, it will decide all of the questions involved.

Authorities under Point 11 *of our Brief.*

For these reasons the appellees not only do not object to the jurisdiction of the Commerce Court and this court to decide the debated question, but they join with the Government in asserting that the Commerce Court erred in refusing to exercise jurisdiction. They submit the case now being here, that this court should itself decide, and pass upon the legality of the proposed contract, and remand the case to the Commerce Court with directions to enter such decree with respect thereto as this court shall upon the merits determine.

(2) THE LEGALITY OF THE PROPOSED CONTRACT:

What is this contract which is assailed by the Federal Government as being unlawful?

There can be but one answer. It is a contribution made by the Stock Yard Company towards the erection of a plant at its yards. It is made because the entire business of the company is dependent upon the existence and operation of packing houses in the immediate neighborhood of its property. These

plants afford a certainty of buyers of live stock at the yards.

There can be no reasonable doubt but that the purpose of the contract is legitimate, and exactly what the contract discloses on its face.

It needs no argument to prove that a great market for live stock cannot be permanently maintained without buyers being located in its immediate vicinity, otherwise there would be no staple demand and no certain market.

The contract is not remotely or incidentally connected with transportation, or freight or the rates paid therefor.

With respect to Pfaelzer & Sons, the beneficiaries of the contribution, the contract does not call for, and does not impose upon them the duty of making a single shipment, either as consignor or consignee over any railroad in the United States. For generations payments of this character have been made in this country. They are clearly within the charter powers of corporations.*

In 1890 the Investment Company itself paid $750,-

*Ellerman v. *Chicago Junction Railways, &c., Co.*, 49 N. J. Eq., 217; *Willoughby* v. *Chicago Junction Railways, &c. Co.*, 50 N. J. Eq., 656; *Richelieu Hotel Co.* v. *Mil. Encampment Co.*, 140 Ill., 248, 263-4; *B. S. Green Co.* v. *Blodgett*, 159 Ill., 169, 174-6; *Central Lumber Co.* v. *Kelter*, 201 Ill., 503, 505; *Northern Pac. R. Co.* v. *City of Spokane*, 56 Fed., 915, 917, s. c., 64 Fed., 506, 509, and cases cited; *McGeorge* v. *Big Stone Gap Imp. Co.*, 57 Fed., 262; *Vandall* v. *S. S. F. Dock Co.*, 40 Cal., 83; *People* v. *Eel River, etc., R. R. Co.*, 98 Cal., 665; *Temple St. Cable Ry.* v. *Hellman*, 103 Cal., 634; *Texas & St. L. R. R. Co.* v. *Robards*, 60 Tex., 545; *Whetstone* v. *Ottawa University*, 13 Kansas, 320; *Town Co.* v. *Russell*, 46 Kansas, 382; *Hasson et al.* v. *Venango Bridge Co.*, 1 Pa. Dist. Rep., 521; *Leslie* v. *Lorillard et al.*, 110 N. Y., 519; *Louisville & Nashville R. R. Co.* v. *Literary Society of St. Rose, &c.*, 91 Kentucky, 395.

000, and guaranteed both as to principal and interest bonds of the par value of $2,000,000 for Swift & Company, Armour & Company and Morris & Company, packers doing business at the yards. These large packing establishments were at that time about to leave the yards, and construct new establishments elsewhere. As the result of the contracts they covenanted not to remove their packing establishments from the yards, but to maintain and operate them there for a fixed period of years with an average daily kill which was fixed in the contract. In other words the contracts were identical in tenor and effect with the contract in controversy here.

This was 3 years after the passage of the Interstate Commerce Act.

Section 2 of that Act is identical today with what it was in 1890. This contract between the Investent Company and the larger packers at the yards was immediately assailed upon the ground that it was *ultra vires*, but the court held that it was legal.

> *Ellerman* v. *Chicago Junction Railways & Union Stock Yards Company*, 41 N. J. Equity, 217 (23 Atl., 87).

Later the same contract was assailed by a minority stockholder upon the ground that it violated the provisions of the Illinois Anti-Rebate Act, the Interstate Commerce Act, and the Sherman Anti-Trust Act.

While we appreciate that the decision of a New Jersey court would not as to such a question be binding upon this court, nevertheless it is persuasive. The court said:

"* * * Nor can I see how the agreement of the New Jersey Company *with the Associate Packers,* customers of the Chicago Company, although providing for an annual payment to them, can be held to provide for *a rebate or discrimination* in violation *of the Illinois statute.* But if it is admitted that the New Jersey Company stands for the Chicago Company; *that the latter is a railroad* corporation under the statutes of Illinois, and, as such, is subject to its provisions, and owes a public duty; and that, as the performance of the contract *is to be made in Illinois, it is* subject to the laws of that state,—wherein does the *agreement provide for an unlawful discrimination or rebate?* * * * Whether discrimination can be made lawfully or not, if not unjust, and the above questions considered in those cases, I do not stop to examine, because I do not detect in this case that the agreement of the New Jersey Company is open to such charge. It is obvious that the agreement does *not in terms make any provision looking to such* a purpose. The bills admit this. * * * But it is said, while the contract makes no provision in terms for unequal charges, and the Chicago Company does not intend to discriminate in that way, the whole scheme is a device to evade the statute, and that the statute provides not only that all such discriminating rates, charges, collections, or receipts, when made directly, but also when made by means of any rebate, drawback, or other shift or evasion, shall be deemed and taken against such railroad corporation as prima facie evidence of the unjust discrimination prohibited by the terms of the act. *But what prohibition of the act is sought to be evaded by the agreement?* So far as the Chicago company, as a corporation owning a railroad, is concerned, it must be those provisions *of the act aimed at different charges for depot charges, or for the transportation of cars*

over its tracks to different persons, or for long or short hauls. In view of the operations of the company as set out in its answer and the evidence, these are the only provisions of the act which apply.

There being no provision *for direct preference,* in what *does the alleged discrimination* consist, or how is it created? It is remarkable, as before suggested, that no two of counsel agree as to just how discrimination or rebate is provided for."

Coming to the further contention that the assailed contracts violated the Interstate Commerce Act, the court said:

"What has been said with reference to the question of freight in considering the matter in connection with the Illinois statute applies with equal force to this contention, and establishes that it is without merit."

Donations of the character of the one assailed here are frequently made by cities, or by improvement associations or land companies to industries for the purpose of obtaining the location of manufacturing establishments at or near the land. As a usual thing sites are selected near the tracks of railroad companies, but it has never been claimed that such a donation is a violation of either Section 2 of the Interstate Commerce Act or Section 3 of the Elkins Act.

Indeed, it requires a vivid imagination to evolve a theory upon which this contract between the Stock Yard Company and the Pfaelzers can be called illegal.

Section 2 of the Interstate Commerce Act is ex-

pressly limited to payments made by common carriers. The section begins:

> "If any common carrier subject to the provisions of this act shall directly, or indirectly, etc."

It is very clear from the reading of the provisions of Section 3 of the Elkins Act that that act also is limited to a prohibition of devices by which common carriers engaged in interstate commerce shall transport for shippers property for less than the published tariff rates. Section 3 reads as follows:

> "The wilful failure upon the part of any carrier subject to the Act to file and publish tariffs or rates * * * shall be a misdemeanor, and it shall be unlawful for any person or corporation to offer * * * or receive any rebate, concession or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to the Act to Regulate Commerce * * * whereby any such property shall be by any device whatever transported at a less rate than that filed in the tariffs published and filed by such carrier. * * * Any person or corporation whether carrier or shipper who shall knowingly offer, grant, or give * * * such rebates * * * shall be deemed guilty of a misdemeanor."

These provisions of the Act, in the ordinary meaning of the English language taken in connection with the context really mean,

> "That carriers and shippers may not either directly or indirectly give or receive any concession from the published rates whereby the property of the shipper shall be transported for a less rate than that named in the tariff of the carrier."

The Government in the argument in the Commerce Court seized upon the phrase,

> "And it shall be unlawful for any person or corporation."

It segregated these words from the context and then argued that a corporation not a common carrier would be guilty of paying a rebate if out of its private funds a contribution was made to a shipper which shipped freight over a railroad. The Government was forced to this position because if the Stock Yard Company is not a common carrier there is no other theory upon which the legality of the proposed contract can be logically disputed.

To bolster up this unique argument the Government relied in the Commerce Court upon a decision by his Honor, Judge Landis, in *Interstate Commerce Commission* v. *Reichmann*, 145 Fed., 235. The Interstate Commerce Commission in an investigation which it was conducting called to the stand an officer of a private car company owning some 9,000 cars. When the railroad companies used these private cars they paid to the owner of the cars as car mileage or rental therefor a certain sum per mile. The employe of the car company was asked this question.

> "What part of the mileage or from whatever source have you given up to shippers during the last six months."

The witness refused to answer. The Commission filed a mandamus proceeding to compel the witness to answer. In the opinion the court stated the following facts:

> "The car company has no direct or open re-

lations with the intending shipper. It does not undertake to supply him with cars. This is done by the carrier, and when the shipper is furnished cars belonging to the Street Company it gets no other or better transportation service than when his cattle go forward in cars of the carrier company. Nominally, at least, the car Company's only relation with respect to freight to be shipped is with the carrier, and its only interest in the transaction is that the freight may go forward in its cars; and this because when the car stands idle it produces no revenue for its owner, and when it is in motion it is earning mileage."

The case proceeded upon the theory that if the witness had answered the question he would have admitted that the Street Company had paid to shippers a bonus or reward for the purpose of influencing shippers to demand its cars from the railroad companies.

Judge Landis held that the witness should answer the question, and in his opinion further held that the owner of a private car which was rented by a railroad company could not pay any part of the mileage to a shipper for any purpose whatsoever; that such a transaction was forbidden by Section 3 of the Elkins Act.

This brief statement of the *Reichmann* case is sufficient to distinguish it from the cases at bar.

Irrespective of whether the *Reichmann* case is or is not good law it has no authority here. In the *Reichmann* case a payment was being made to shippers by the owners of the cars which had a direct relation to the movement of the freight in the cars and to the cost thereof. It was paid by the owner of the car to influence the shipper to use the car.

The contract in the case at bar differs so radically from the arrangement in the Reichmann case that the Reichmann case might well be the law and still not be an authority against the legality of the contract involved here.

But the appellees go further and respectfully submit that the Reichmann case is not an authority in support of the proposition for which it is cited by the Government. All that the court held in that case was that the witness should answer the questions propounded to him by the Interstate Commerce Commission.

The appellees submit that when the Elkins Act is fairly construed it will not be held to prohibit a person or corporation not a common carrier from contributing out of its private funds a bonus to a manufacturer, even though the same contribution if made by a common carrier might be held to be illegal.

As was said by this court in discussing the Anti-Trust Act in *Hopkins* v. *United States*, 171 U. S., 578:

> "There must be some direct and immediate effect upon interstate commerce in order to come within the Act."

So we say here that a contract does not violate the Act to Regulate Commerce merely because remotely it is of value to a manufacturer who may or may not also be a shipper over some railroad. If the main purpose and chief object of the contract is

to promote the lawful business, and to increase the lawful trade of the parties, it is not prohibited by law.

V.

CONCLUSION.

The importance of this case to the appellees, the Stock Yard Company and the Investment Company, cannot possibly be minimized:

The legality of its bonus contracts having been assailed, the future prosperity of the Stock Yard Company may fairly be said to be hanging in the balance.

The answer shows that the Stock Yard Company exists upon a competitive basis with other yards scattered throughout the United States.

If the Stock Yard Company is permitted to compete with its competitors because of the Interstate Commerce Act, it is not overstating the fact to say that the prosperity of the property as the largest livestock market in the world will be impaired to a degree which it is impossible to exaggerate.

To fail to decide this most important question would be equally unfortunate. The officers of the Stock Yard Company and of The Investment Company do not believe that the proposed contract is illegal, but—its legality is assailed by the Federal Government.

In other words they are confronted, if this question is not decided upon its merits, on the one hand with business incompetency, and on the other hand with a criminal prosecution.

No officer charged with the duty of wisely managing the affairs of his stockholders should be forced to choose between two such harsh alternatives.

The law should be so clear that anyone anxious to obey it may understand it, and we earnestly join with the Government in asking the court to determine this all important issue.

The appellees, the Stock Yard Company and the Investment Company, submit that the decree of the lower court to the effect that they and neither of them are common carriers should be affirmed; that this court should in this proceeding pass upon and determine the legality of the proposed contract, and as to that question should reverse the decree of the Commerce Court with directions that a decree be entered therein finding that the assailed contract is lawful and dismissing *the petition as to them and each of them not because of want of jurisdiction, but because of want of equity.*

Respectfully,

RALPH M. SHAW,
Solicitor for the Appellant and the Appellees.

FILED.
OCT 15 1912
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

THE UNITED STATES OF AMERICA UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION, *Appellant,* vs. THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, A CORPORATION; THE CHICAGO JUNCTION RAILWAY COMPANY, A CORPORATION; THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY, A CORPORATION; AND DAVID PFAELZER, ABE PFAELZER, AND JONAS PFAELZER, A COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME OF LOUIS PFAELZER & SONS, *Appellees.*	621.
CHICAGO JUNCTION RAILWAY COMPANY, *Appellant,* vs. THE UNITED STATES OF AMERICA, *Appellee.*	622.

REPLY ARGUMENT FOR
APPELLANT, CHICAGO JUNCTION RAILWAY COMPANY,
and
APPELLEE, UNION STOCK YARDS AND TRANSIT COMPANY OF CHICAGO.

RALPH M. SHAW,
Solicitor for said Appellant and said Appellees.

GUNTHORP – WARREN PRINTING CO., CHICAGO

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vs.	622.
THE UNITED STATES OF AMERICA, *Appellee.*	

REPLY ARGUMENT.

In order that the issues in this case may be clearly defined, and that there may be no misunderstanding as to the position taken by the respective parties on the respective questions involved, the appellant, the "Junction Company," and the appellee, the Stock Yard Company herewith respectively submit the following suggestions, by way of a reply to the brief and argument filed by the Government in these cases.

I.

THE STATEMENT OF FACTS.

The statement of facts made by the Government differs somewhat from the statement made in the brief filed by the "Junction Company," the "Stock Yard Company" and the Investment Company, but it is only fair to say that a careful study of the facts as made in the briefs of each of the parties hereto, coupled with reference to the record will leave no one in doubt as to the exact facts touching the history, the organization and the activities of the companies involved in this litigation and of the questions which are presented for review here.

II.

THE GOVERNMENT'S POINTS AND AUTHORITIES.

(1) The Junction Company and the Stock Yard Company do not question the proposition enunciated by the Government to the effect that property is in interstate commerce from its delivery to the carrier for shipment into another state.

Coe v. *Erroll*, 116 U. S., and the *Daniel Ball* decide that point.

In the *Daniel Ball*, the court also held that a steamer engaged in navigating wholly in one state [redacted] the navigable waters of the United States, could be required to take out a license and have its boat inspected under the federal laws regulating the navigability of the navigable waters of the United

States. But the service rendered by the *Daniel Ball* with respect to interstate commerce was entirely different from the service rendered by appellant the Chicago Junction Railway Company. The facts in the case at bar, aside from the point decided, exclude that case from being an authority here.

However—the question as to the time when an article begins to move in interstate commerce is not one of the questions presented in these cases.

The only questions presented by these cases which are even remotely connected with the proposition discussed by the government are whether the Junction Company and the Stock Yard Company are common carriers "*engaged in interstate commerce*" within the meaning of the Interstate Commerce Act.

As to this, both the Junction Company and the Stock Yard Company respectfully insist that the trunk line carriers which undertake, or in the words of the statute "engage" to carry the goods for the shippers are the only ones who, in the words of the statute are "engaged in interstate commerce."

From this it follows that the farmer or any other person or corporation that furnishes the unloading dock for cattle in transit (though he furnishes a service or instrumentality which comes within the definition of "transportation" as that word is defined by the first section of the Act), is not subject to its provisions, nor to the jurisdiction of the Commission.

Indeed it may fairly be said that the Government is committed to the proposition that neither the

Stock Yard Company nor the Junction Company is a common carrier engaged in interstate commerce. In 1908 three indictments were brought in by the grand jury, at the instigation of the Government, against the St. Louis National Stock Yards, in the Eastern District of Illinois, known as numbers 520, 589 and 599. In each of these cases the Government insisted that the Stock Yards Company had violated the 28-hour law. The cases were tried upon a stipulated state of facts. In the opinion Judge Wright said:

> "The statute is that no railroad * * * common carrier other than by water * * * whose road forms any part of a line of road over which cattle, sheep, swine, * * * shall be conveyed from one state or territory * * * into or through another state or territory * * * shall confine the same in cars * * * for a longer period than 28 consecutive hours without unloading the same * * *.
>
> There are certain exceptions not necessary now to be alluded to * * * it being alleged that the St. Louis National Stock Yards violated this law. Of course the first question to determine, and that is the principal question that has been alleged here, is whether this organization known as the National Stock Yards is a railroad or a common carrier. Its very name imports to start with, that it is not either a railroad or a common carrier. And by looking into the stipulation which has been submitted, upon which this case is to be adjudged, it is very clear to my mind that it is neither a carrier nor a railroad within the meaning of the statute. It is true it has certain tracks, 33 and a fraction miles of railroad, but its business is to receive these shipments of live stock and to deliver and care for them, and to feed them and house them. That is all it does. * * * The fact that the railroad or carrier had violated the law prior

to that time is of no importance, so far as the stoppage of these jacks (being the cattle in transit) is concerned. It wouldn't do to say that because the carrier had violated the law, that therefore no one who had the appliances and facilities for feeding and watering, as contemplated by the statute, would dare to take them. That is the absurdity to which this argument finally leads.

So upon no view of this case does the Stock Yards fall within the meaning of this statute. It isn't its business to transport or carry * * * it only receives at the line of its confines—never goes off its own premises, and delivers the stock to those to whom it was consigned if they are located within its yards. Entertaining these views there can be but one finding, that would be, that the defendant is not guilty in these cases."

Later that judgment was affirmed by the Circuit Court of Appeals for the Seventh Circuit. The Government appealed to this court, but when the case came on for argument permitted the judgment of the District Court to be affirmed on stipulation.

U. S. of America v. *St. Louis National Stock Yards*, 223 U. S., 737.

(2) It may be true, as is urged by the Government, that cars are "the subject of commerce." It is true that cars may, at time, be articles moving in interstate commerce in the same way that any other commodity moving in interstate commerce is an article of commerce. But the Stock Yard Company is not engaged in moving cars in interstate commerce. It does not move them at all.

The same is true of the Junction Company.

So far as the Junction Company moves cars at

all, it does not move the cars "as freight." For the purposes of the service rendered by the Junction Company the car is not an article of commerce. It is a conveyor or holder in which articles of commerce are stored. The service rendered by the Junction Company in switching the cars containing interstate commerce does not, for the purposes of its case, detract from or add to the capacity in which the Junction Company acts. As was said by this court in *U. S.* v. *St. Louis Terminal Co.*, 224 U. S., 383 (401).

> "We are not unmindful of the essential difference between terminal systems proper, so described, and the railroad transportation companies. *The first are but instrumentalities which assist the latter in the transfer of traffic between the lines and in the collection and distribution of traffic.*"

As was said in *A., T. & S. F.* v. *U. S.*,

> "The company, in carrying the mails, was not hauling freight, nor was it acting as a common carrier with corresponding rights and liabilities. * * *"

So we say in this case, the company, in switching cars loaded with freight for other companies, is not acting as a common carrier engaged in interstate commerce—it is the servant of a common carrier so engaged.

(3) Again, it is stated by the Government that a "towboat may be engaged in interstate commerce."

The appellant, the Junction Company, does not deny that a towboat may be engaged in interstate commerce.

The proposition for which the Junction Company

contended in its original brief and now contends here, is, that a towboat *is not a common carrier.* Of course, a towboat can be engaged in interstate commerce, but as was pointed out in our original brief, before a person, firm or corporation may be subject to the Act, it must be *a common carrier engaged in interstate commerce.* A towboat is not a common carrier. *The Junction Company may be engaged in interstate commerce but the service which it renders with respect to that commerce does not make it a common carrier engaged in interstate commerce.* The record is silent in this case with respect to what, if any, service the Junction Company does in the matter of intra industry movements. The Junction Company does, however, in fact switch intra industry freight at the yards, but its intra industry switching has nothing whatsoever to do with the service which it renders with respect to articles in interstate commerce. As to such shipments, it is a towboat and *not a common carrier engaged in interstate commerce,* within the meaning of the Interstate Commerce Act.

(4) It is stated by the Government under the heading "Points and Authorities" that "The Junction Company was conceded to be a common carrier." If, by that, it is meant that the appellant ever conceded that the Junction Company was or is a common carrier engaged *in interstate commerce,* the appellant, the Junction Company, respectfully denies that any such concession has ever been made. Beyond that, for the purpose of this case, it is unnecessary to go.

(5) It may be true, as is stated by the Govern-

ment, that "courts have held stock yard companies to be common carriers engaged in interstate commerce," but—

Such a statement as applied to the facts in these cases is extremely fallacious and misleading.

The Stock Yard Company respectfully submits that no court has ever held that any stock yard company whose activities were limited to the activities in which the appellee in these cases is now engaged was engaged in interstate commerce. No court has ever made such a decision. As was pointed out in our original brief, the Interstate Commerce Commission has decided exactly to the contrary with respect to this identical appellee. *Cattle Raisers Association* v. *Fort Worth and D. C. R. Co.*, 7 I. C. C., 513 (536-538).

AS TO THE ALLEGED PARTNERSHIP.

(6) It is argued, however, by the Government that the Stock Yard Company and the Junction Company are in reality partners, and are but one system in the eyes of the law. Five cases are cited by the Government in support of this proposition. The appellee, the Stock Yard Company, respectfully submits that not one of them is an authority in point as applied to the facts in its case.

The first case cited by the appellees upon this point held directly to the contrary.

In *Union Stock Yards Company of Omaha* v. *U. S.*, 169 Fed., 404, the Circuit Court of the Eight Circuit, while considering whether or not the Union Stock Yards Company of Omaha was liable for a vio-

lation of the Federal Safety Appliance Act, used the following language (406):

> "It must be conceded that the stockyards company would not be a common carrier, nor the property used by it a railroad, if its operations were confined to maintaining the sheds or pens, to unloading shipments thereto, to loading shipments therefrom, and to feeding, watering, caring for, and otherwise handling livestock therein."

In *Meehan* v. *Valentine*, 145 U. S., 623 (the second case cited by the Government) the court held generally that one who lends a sum of money to a partnership under an agreement that he shall be paid interest thereon at all events, and shall also be paid one-tenth of the yearly profits of the partnership business if those profits exceed the sum lent, does *not* thereby become liable as a partner for the debts of the partnership. In reaching this decision the court said (624):

> "So an agreement that a lessor of a hotel shall receive a certain portion of the profits thereof by way of rent does not make him a partner with the lessee."

In *Southern Pacific Terminal Co.* v. *I. C. C.*, 217 U. S., 498 (the next case cited by the Government on this point), the methods by which the Galveston Wharf was used as a part of the Southern Pacific Railroad Company, an interstate railroad, established the fact that the wharf was a part of the railroad. Further,—the documents in the chain of title and, as well, the franchise for its use, contained an express stipulation that the wharf in question was to be used as the public and general terminal of a designated interstate carrier system. Upon an ex-

amination of all the facts the court held that (a) the grant in title of the wharf, (b) the franchise, and (c) more particularly the method by which the Galveston wharf was used, made the wharf and the tracks thereon a part of the system; that it was in fact the Southern Pacific Railroad Company, and in view of the identical ownership, management and control, was one with that system. In the case at bar we are dealing with an entirely different situation.

(a) There is no identity of ownership, management and control, as in the Galveston case.

(b) The Stock Yard Company does not pretend to exercise any control over the tracks now operated and managed by the Junction Company.

(c) The Stock Yard Company is not a carrier engaged in interstate commerce.

(d) It is not a part of an interstate system.

(e) The Stock Yard Company as a corporation exercises no control over the Junction Company as a corporation.

The only relationship whatever between the Stock Yard Company and the Junction Company is the fact that there is a common ownership in the Investment Company of the stocks of each, but the common owner is not (as was the case in the Southern Pacific Company) engaged in interstate commerce. It is not a system conducting an interstate commerce business. It is merely an investment company owning securities. A terminal wharf owned and operated identical in interest, control and management with an interstate railroad com-

pany presents a very different situation from a stock yard which is neither owned, operated nor controlled directly or indirectly by an interstate carrier, and which does not, of itself, interfere with the operation or management of any operating company.

The case of the *Northern Securities Company* v. *U. S.*, 193 U. S., 197 (the next case cited by the Government on this point), merely presented the question as to whether or not the ownership of the stock of two competing interstate railroads which had been merged into a common owner as the result of an agreement for an exchange of securities was or was not a violation of the so-called Sherman Anti-Trust Act. The fact that the Northern Pacific and the Great Northern Railway Company were interstate carriers was conceded in the case and the question as to whether or not the Northern Securities Company was subject to the jurisdiction of the Interstate Commerce Commission was not raised upon the records. How different from the questions presented here!

The case of *U. S.* v. *Milwaukee Refrigerator Transit Co.*, 145 Fed., 1007 (the next case cited by the Government on this point), presents questions likewise essentially different from any questions presented here. In that case it was held that a refrigerator company organized for the purpose of controlling the interstate transportation of a brewing company, having entered into a contract for commissions on such traffic with certain railroads, was a party interested in the traffic and was therefore subject to the provisions of the Act prohibiting the granting or receiving of rebates. It will be

noted that the refrigerator company was organized for the express purpose of controlling the traffic of the brewing company. The amounts received by the refrigerator company were based upon and measured by the volume of interstate shipments which the refrigerator company delivered to the carrier. The court held (see p. 1012) that under such circumstances the refrigerator company occupied the same relation to the traffic as if it were the owner, and could not therefore receive compensation for delivering it to the railroad company based upon the volume of the traffic delivered.

How different from the case at bar!

Here there is no sum to be paid by an interstate carrier, to a person owning or controlling traffic, measured by the volume of the traffic delivered.

On the contrary, no payment is required here from any interstate carrier to any person whatsoever. No contract is here made by which any shipper or person owning or controlling freight, contracts or agrees to deliver any freight in any volume whatsoever to any common carrier. Every essential fact which made the contract with the refrigerator company abhorrent to the law is wholly absent from the facts in the case at bar.

Furthermore, although the case is cited as an authority in support of the proposition that the Stock Yard Company and the Junction Company are partners, it is apparent to even the casual reader, that the Refrigerator Transit Company case has no bearing upon that proposition whatsoever.

The case of *Kendall* v. *Klapperthal Co.*, 52 Atl., 92

(being the last case cited by the Government on this point), involved a question not even remotely connected to the questions under consideration here.

Why pursue this question further, however? The argument of the Government on this point is answered completely by the decision of this court in *U. S. ex rel.* v. *Del. & Hud. Co.*, 213 U. S., 366, cited in our original brief.

AS TO THE ALLEGED REBATING.

(7) Finally it is claimed that the payment under the Pfaelzer contract is a rebate, and nine cases are cited in support of the proposition. These cases can be disposed of summarily.

The case of *Ill. Cent. R. R. Co.* v. *Reichmann*, 145 Fed., 235, has already been distinguished in our original brief (see pp. 83-84) and needs no further consideration.

The case of *U. S.* v. *Milwaukee Refrigerator Transit Co.*, 145 Fed., 1007, has been distinguished, *supra*.

In *Thomas* v. *U. S.*, 156 Fed., 897, the appellant, Thomas, was indicted for an alleged conspiracy to obtain a rebate from the Burlington R. R. Co. in favor of certain shippers in St. Louis. The charge was that Thomas was party to an arrangement by which he undertook to get commissions from an interstate carrier upon all freight routed by him over the rails of such carrier; he in turn arranged to pay to such shippers in Kansas City as would permit him to route their freight, a certain portion of the sum received by him from the railroad company as such commissions. In other words, Thomas undertook

to give a refund to every shipper over the line of the carrier of a certain amount based directly upon the freight received by the railroad company for making the carriage. To state the case is to distinguish it.

In the case of *C. & A.* v. *U. S.*, 156 Fed., 558, the Alton Company was charged with paying a rebate of a certain sum per car of freight shipped by the shipper out of its plant over the rails of the Alton Company. The Alton Company defended the case upon the ground that the payments made by it were for trackage rights over rails owned by the shipper. The company was found guilty and fined. On the appeal to this court four of the justices held that the transaction was lawful and four held that it was unlawful, and the case was affirmed without an opinion, by an equally divided court. Irrespective of which of the two views of the law was correct, it is again sufficient to say that the mere statement of the case distinguishes it from the case at bar.

In *U. S.* v. *D. L. & W. R. Co.*, 152 Fed., 209, there was substantially the same scheme as that involved in the case of *Thomas* v. *U. S.*, *supra.*

A., T. & S. F. v. *U. S.*, 170 Fed., 250, has not the remotest bearing upon the questions presented here. In that case a judgment of guilty against the Atchison Company was reversed by the Court of Appeals because the lower court had refused to permit the accused to show that the sums with which they were charged with rebating were in fact sums which they were rightfully entitled to receive from the carrier because of damage to freight in shipment.

In *Wight* v. *U. S.*, 167 U. S., 512, it was held that

a refund upon specific shipments made by a carrier from a published tariff rate, sufficient to absorb the cartage by a consignee in the City of Pittsburgh, was a rebate.

In *N. Y. N. H. & H. R. R.* v. *I. C. C.*, 200 U. S., 361, the court merely held that a common carrier engaged in interstate commerce had no right to contract to sell and transport in completion of the contract the commodity sold, when the price stipulated in the contract did not pay the cost of purchase, the cost of delivery and the published freight rates. See p. 391.

In *Armour Packing Co.* v. *U. S.*, 209 U. S., 56, held that where a carrier transported freight for a shipper at less than the published tariff rates there was a violation of the Elkins Act, notwithstanding the fact that a contract previously entered into by and between the carrier and the shipper provided for the lower rate.

This ends the cases cited by the Government upon this branch of the case.

It will be seen that in substantially each one of them there was a direct relationship between a published tariff rate on a shipment moving thereunder and a payment made either by the carrier or some intermediary to the shipper, based upon the freight transported.

Decisions in such cases do not afford any aid in determining the questions presented by this case.

If the court holds, as we believe it will, that the Stock Yard Company is not a common carrier, then we have presented here the following facts:

1. A payment by a corporation, not a common carrier, of a certain sum of money, to a manufacturing concern, for the purpose of increasing the business of the payor. It is not made a condition of the payment that the payees shall make any shipments over any common carrier at any time. The amount to be received by the payee is entirely independent of the question as to whether it ever does at any time, either as shipper consign, or as consignee receive, any shipments over any common carrier. The mere statement of such a situation should suffice to purge it of all illegality.

The Government, however, claims that it is illegal because, as the Government says, if the payee does locate its plant at the desired point, then it will necessarily follow as a result of the payee's business, that the volume of freight moving over an alleged interstate carrier will be increased, and that therefore the payment by the payor to the payee should be construed by the court as being a payment in diminution of unknown freight rates which the payee may never have to pay, and that therefore it is illegal and should be prohibited.

Surely it requires a far stretch of the imagination to create out of such a state of facts a crime.

Nevertheless, this is the position taken by the Government and urged seriously by the Interstate Commerce Commission and the Department of Justice. It is therefore imperative, not only to the appellee and to the Pfaelzers, but to the entire commercial world, that the question presented should be determined, in order that men

anxious to obey the law and ignorant as to the law's meaning, may not be prosecuted as criminals for the commission of acts that up to the present time have never been held to be illegal.

We earnestly urge the court, therefore, to decide this question upon its merits, and to hold that the law was not created for the purpose of prohibiting so legitimate a transaction.

Respectfully submitted,

RALPH M. SHAW,
Solicitor for Chicago Junction Railway Company, Appellant, and Union Stock Yard and Transit Company, Appellee.

OCT 10 1912
JAMES H. McKEN

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

THE UNITED STATES OF AMERICA UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION, *Appellant,* vs. THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, A CORPORATION; THE CHICAGO JUNCTION RAILWAY COMPANY, A CORPORATION; THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY, A CORPORATION; AND DAVID PFAELZER, ABE PFAELZER, AND JONAS PFAELZER, A COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME OF LOUIS PFAELZER & SONS, *Appellees.*	621.
CHICAGO JUNCTION RAILWAY COMPANY, *Appellant,* vs. THE UNITED STATES OF AMERICA, *Appellee.*	622.

BRIEF AND ARGUMENT FOR DAVID PFAELZER, ABE PFAELZER, JONAS L. PFAELZER AND LOUIS PFAELZER & SONS, A CORPORATION, APPELLEES.

WILLARD M. McEWEN,
Solicitor for Appellees.

JOSEPH WEISSENBACH,
Of Counsel.

GUNTHORP – WARREN PRINTING CO., CHICAGO

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CHICAGO JUNCTION RAILWAY COMPANY, *Appellant,* vs. THE UNITED STATES OF AMERICA, *Appellee.*	622.

STATEMENT.

These cases are brought here by the respective appeals of the United States of America and the Chicago Junction Railway Company from a decree entered by the United States Commerce Court.

The United States complains of the decree below, in that it failed to find others than the Chicago Junction Railway Company as engaged in interstate commerce and that it failed to pass upon and adjudicate the contract by which the Pfaelzers were to receive a bonus of Fifty Thousand Dollars ($50,000.00) from the Union Stock Yard and Transit Company of Chicago, but denied jurisdiction.

The interest known as the Pfaelzer contract originally belonged to the several Pfaelzers as co-partners, which interest was acquired later by the corporation, Louis Pfaelzer & Sons, which was made a party in the court below.

The Pfaelzers have no interest in the issue between the Chicago Junction Railway Company and the United States, except as it might affect the question of jurisdiction, nor any interest as between the Government and the other corporations, except as those questions affect the contract in question and the jurisdiction of the court.

Pleadings and Facts.

As to the nature of the case, the pleadings and facts, these appellees adopt the statement of the same filed on behalf of the Union Stock Yard and Transit Company of Chicago, and especially the statement concerning the said contract, appearing on pages twenty-four (24) to thirty-one (31), inclusive, of said brief.

The Contention of the Appellees, the Pfaelzers.

The contract in question is a legal one, not forbidden by any law or rule of public policy.

Some confusion existed below as to what facts were before the court, but we contend that the equity practice as to submission on bill and answer must prevail.

The plaintiff below, by moving for a decree, in the matter admitted the truth of all the answers,

but necessarily took the position that there was enough affirmatively admitted, by every defendant, of the allegations of the petition to authorize a decree against all, and that what was not admitted by the answer stands denied, and not proved.

Whether the proposed contract for the payment of Fifty Thousand Dollars was illegal, is to be determined by whether it was an unlawful discrimination or advantage.

What such a payment is depends both upon, (1) its effect as to all concerned; (2) the intention of the parties as to application. In no event does it transgress the law.

BRIEF AND POINTS.

I.

THE MAKING OF DONATIONS TO ASSIST ENTERPRISES TO AID THE BUSINESS OF A CORPORATION IS A LEGITIMATE OBJECT OF CONTARCT AND IS NOT AGAINST PUBLIC POLICY.

(See cases, Mr. Shaw's brief, p. 78.)

I I.

DISCRIMINATION BACKED BY A SOUND REASON (AS DISTINGUISHED FROM MOTIVE) IN A MATTER WHERE AN INDIVIDUAL HAS NO RIGHT TO DEMAND THE PRIVILEGE AS A PUBLIC SERVICE UNDERTAKEN TO BE FURNISHED BY A CARRIER AS SUCH TO ALL ALIKE AND WHICH DEPRIVES HIM OF NOTHING WHICH HE IS ENTITLED TO, OR SUBJECTS HIM TO NO DISADVANTAGE IN THE PUBLIC SERVICE RENDERED TO HIM, IS NOT FORBIDDEN BY THE LAW.

Memphis Frt. Bureau v. *Ft. Smith, etc., R. Co.*, 13 I. C. C. Rep., 1.

Int. Com. Com. v. *L. & N. R. Co.*, 73 Fed., 409.

Central Yellow Pine Assn. v. *V. S. & P. Ry. Co.*, 10 I. C. C. Rep., 193.

U. S. v. *Wells-Fargo*, 161 Fed., 606.

Int. Com. Com. v. *Alabama, etc., Ry. Co.*, 74 Fed., 715.

Cole v. *Rowen*, 13 L. R. A., 848.

Donovan v. *Pa. Ry. Co.*, 199 U. S., 278; 50 L. Ed., 193.

Gamble v. *C. & N. W.*, 168 Fed., 164.

U. S. v. *Oregon R. & Nav. Co.*, 159 Fed., 982.

Central Stock Yds. Co. v. *L. & N. R. Co.*, 24 I. C. C., 339; 118 Fed., 113; 55 C. C. A., 63; 192 U. S., 568; 48 L. Ed., 560.

Hart v. *Choctaw Ok. & G. Ry.*, 118 Fed., 169.

Missouri P. R. Co. v. *Nebraska*, 164 U. S., 404.

N. P. Ry. v. *R. Com.*, 28 (N. S.), L. R. A., 1021.

I. C. C. v. *Alabama Mo. R. Co.*, 168 U. S., 144; 42 L. Ed., 414.

L. & N. R. Co. v. *Behlmer*, 175 U. S., 684; 44 L. Ed., 309.

III.

WHAT A DONATION IS DEPENDS BOTH UPON ITS (1) EFFECT AS TO ALL CONCERNED AND (2) THE INTENTION OF THE PARTIES AS TO APPLICATION. THESE ARE THE ELEMENTS OF THE DISCRIMINATION AND ARE QUESTIONS OF FACT TO BE PROVED BY THE PETITIONER.

I. C. C. v. *L. & N. R. Co.*, 73 Fed., 409.

I. C. C. v. *Alabama Midland R. Co.*, 168 U. S., 144, 170; 42 L. Ed., 414.

Root v. *L. I. R. Co.*, 114 N. Y., 300; 4 L. R. A., 33.

Texas, etc., v. *I. C. C.*, 162 U. S., 197; 40 L. Ed., 940.

I. C. C. v. *Baltimore R. Co.*, 43 Fed., 37; same affirmed 145 U. S.; 36 L. Ed., 699.

IV.

THE PRESUMPTION IS IN FAVOR OF FAIRNESS AND LEGALITY.

I. C. C. v. *C. G. W. R. Co.*, 209 U. S., 108; 52 L. Ed., 268.

The plaintiff by moving for a decree below not only admits the truth of all the answers, but must take the position that there is enough affirmatively admitted *by every defendant* of the allegations of the petition to authorize a decree against *all*, for he must abide the chancery rule of pleading that what is not admitted stands denied.

There is not enough admitted by the answers for this court to say that the defendants either jointly or severally are common carriers nor enough to say that the payment to the Pfaelzers is an undue preference or a rebate.

There is but one fact before the court on which petitioner must stand, as to the Pfaelzers, viz.: that the Stock Yards Company will pay $50,000 as an unlawful discrimination.

What such a payment is depends both upon its (1) effect as to all concerned and (2) the intention of the parties as to application. These are the elements of the discrimination and are questions of fact to be proved by the petitioner.

I. C. C. v. *L. & N. R. Co.*, 73 Fed., 409.

I. C. C. v. *Alabama Midland R. Co.*, 168 U. S., 144, 170; 42 L. Ed., 414.

Root v. *L. I. R. Co.*, 114 N. Y., 300; 4 L. R. A., 33.

Texas, etc., v. *I. C. C.*, 162 U. S., 197; 40 L. Ed., 940.

I. C. C. v. *Baltimore R. Co.*, 43 Fed., 37; same affirmed 145 U. S.; 36 L. Ed., 699.

The presumption is in favor of fairness and legality.

I. C. C. v. *C. G. W. R. Co.*, 209 U. S., 108; 52 L. Ed., 268.

In *I. C. C.* v. *Alabama Mid. R. Co.*, Mr. Justice Shiras, in delivering the opinion of the court, said:

> "As the third section of the act, which forbids the making or giving any undue or unreasonable preference or advantage to any particular person or locality, does not define what, under that section, shall constitute a preference or advantage to be undue or unreasonable, and as the fourth section, which forbids the charging or receiving greater compensation in the aggregate for the transportation of like kinds of property for a shorter than for a longer distance over the same line, under substantially similar circumstances and conditions, does not define or discribe in what the similarity or dissimilarity of circumstances and conditions shall consist, it cannot be doubted that whether, in particular instances, there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of the carriage have been substantially similar or otherwise, are questions of fact *depending on the matters proved in each case.* *Denaby Main Colliery Co.* v. *Manchester, etc., Railway Co.*, 3 Railway & Canal Traffic Cases, 426; *Phipps* v. *London & Northwestern Railway* (1892), 2 Q. B. D., 229; *Cincinnati, N. O. & Tex. Pac. Ry.* v. *Interstate C. C.*, 162 U. S., 184, 194; *Texas & Pac. Railway* v. *I. C. C.*, 162 U. S., 197, 235." (See also *Howell* v. *New York L. E. & W. R. Co.*, 2 I. C. C. Rep., 272, 298; *Phillips Co.* v. *Louisville & N. R. Co.*, 8 I. C. C. Rep., 93, 108; *Danville* v. *Southern R. Co.*, 8 I. C. C. Rep., 409, 427.)

The proof or an admitted allegation of an unlawful discrimination, by a carrier or anyone, is utterly wanting.

The Answers Rebut Discrimination.

On the contrary, it appears that the proposed donation is reasonable, harms no one, and is not made by a carrier.

Discrimination and Reasonableness.

The making of donations to assist enterprises is the legitimate subject of contract and is not against any public policy.

It is promotion practiced all over the country by individuals and municipalities.

Although a carrier may not offer discriminatory freight privileges, *it may properly offer lawful inducements to industries to locate on its line.*

Memphis Frt. Bureau v. *Ft. Smith, etc., R. Co.*, 13 I. C. C. Rep., 1.

Otherwise a new railroad would not get started for many years, although others who had used inducements, are already enjoying dividend paying traffic.

Questions of unjust discrimination or undue preference must be treated broadly and practically. The carrier's business is one which involves so many considerations, and the necessity for taking account of so many conditions and factors, that questions of this kind cannot be decided by any process of mere arithmetic or mathematical calculation, and do not

admit of any rigidly theoretical rules in their solution.

Int. Com. Com. v. *L. & N. R. Co.*, 73 Fed., 409.

And no court is warranted in saying that mere payment alone is unjust discrimination.

Custom is shown of similar payments by stock yard companies to assist packing companies whose presence is vital to maintaining a market. If a stock yards company, not a carrier, may offer inducements, then it has a distinct advantage over one who is a carrier. To deny the stock yards company the right to donate is to deny the right of self-preservation exercised by others similarly situated, about whose being carriers there is no question.

A custom long exercised, which, if excluded, would produce greater injustice than its continuance will control a question of alleged discrimination, as in the *Milling in Transit* cases.

Central Yellow Pine Ass'n. v. *V. S. & P. Ry. Co.*, 10 I. C. C. R., 193.

And many others with which the court is familiar.

The payment complained of does not *relate to services performed as a carrier*, as it must to fall within the law.

U. S. v. *Wells-Fargo*, 161 Fed., 606.

The discrimination is neither unjust or unreasonable, only unjust or unreasonable discrimination as a carrier is forbidden.

Int. Com. Com. v. *Alabama, etc., Ry. Co.*, 74 Fed., 715.

In this case the prevailing doctrine was thus stated:

> "We do not discuss the third and fourth contention of the counsel further than to say that, within the limits of the exercise of intelligent good faith in the conduct of their business and subject to the two leading propositions that their charges shall not be unjust or unreasonable and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at common law, free to make special rates looking to the increase of their business, to classify their traffic, to apportion and adjust their rates so as to meet the necessities of commerce and of their own situation and relation to it and generally to manage their important interests upon the same principles which are regarded as sound and adapted to other trades and pursuits."

Acts Which are not Discriminations.

A railroad company may give special privileges to a hackman for the transfer of passengers from its depot to other places, including the use of private grounds;

Cole v. *Rowen,* 13 L. R. A., 848;

Donovan v. *Pa. Ry. Co.,* 199 U. S., 278; 50 L. Ed., 193;

may require one shipper to pay in advance and no one else;

Gamble v. *C. & N. W.,* 168 Fed., 164;

may give warehouse site to one and refuse another;

U. S. v. *Oregon R. & Nav. Co.,* 159 Fed., 982;

may use one live stock depot and decline another;

Central Stock Yds. Co. v. *L. & N. R. Co.,*

24 I. C. C., 339; 118 Fed., 113; 55 C. C. A., 63; 192 U. S., 568; 48 L. Ed., 560;

may build spur track for one and not another;

Hart v. *Choctaw Ok. & G. Ry.*, 118 Fed., 169;

Missouri P. R. Co. v. *Nebraska*, 164 U. S., 404;

N. P. Ry. v. *R. Com.*, 28 (N. S.), L. R. A., 1021.

A legal reason for what would otherwise be forbidden is *competition.*

Competition among localities is firmly established as a justification for actual discrimination.

I. C. C. C. v. *Alabama Mo. R. Co.*, 168 U. S., 144; 42 L. Ed., 414.

L. & N. R. Co. v. *Behlmer*, 175 U. S., 648; 44 L. Ed., 309; and many interstate Commerce Commission decisions.

By the same reason, that an advantage is necessary to be given to prevent the destruction or impairment of competition, stock yards companies are fully justified in making donations.

We think the following is a fair statement from the cases:

Discrimination backed by a sound reason (as distinguished from motive) in a matter where an individual has no right to demand the privilege as a public service undertaken to be furnished by a carrier as such to all alike and which deprives him of nothing which he is entitled to, or subjects him to no disadvantage in the public service rendered to him, is not forbidden by the law.

To show the situation and practice regarding donations and the proposed payment of the $50,000 and its application we quote from the amendment to the answer of the Pfaelzers:

> "That at and long prior to the time of the making of said contract for the payment of $50,000, there were stock yards located in various cities of the West and Southwest, namely, at Chicago, Illinois; Milwaukee, Wisconsin; Sioux City, Iowa; Omaha, Nebraska; St. Joseph, Missouri; Kansas City, Missouri; St. Louis, Missouri; East St. Louis, Illinois; Fort Worth, Texas; Dallas, Texas; St. Paul, Minnesota; Denver, Colorado; Oklahoma City, Oklahoma, at which were located large packing and slaughtering plants, which consumed live stock and furnished a market for the same.
>
> That it has been customary with all of the respective owners of such stock yards, for the purpose of building up and retaining a market, to assist persons and corporations by ways of donations, land or money, or both, to locate packing and slaughtering and other plants, which not only benefited such stock yards owners, but also was of great value to the stock raisers of the contiguous district and equalized the handling of stock throughout the country, by furnishing various convenient places of slaughter and preparation for the market.
>
> That as an illustration of the extent to which this custom is followed these respondents aver that within the past year the owners of the yards at Oklahoma City paid to a large packer the sum of $750,000 to locate a slaughter house at such yards.
>
> As a further illustration respondents aver that several years ago the said Stock Yards Company at Chicago, gave to a packer land for a plant and $500,000 in cash. That this practice and custom has existed for many years and is the result of competition between and

among the several cities having stock yards industries.

That these respondents aver, on information and belief, at the time when it became necessary for these respondents to build a new plant or cease business, they could have obtained from the owners of the stock yards at Kansas City, $200,000 to locate at that place.

That the slaughtering business at Chicago is conducted by about twelve persons and corporations, of which six do about 95 per cent., and of the remaining 5 per cent., these respondents do about 1 per cent. of the total business.

That some one or more of the so-called 'big six' doing 95 per cent. of the business as aforesaid have plants at all of the places above named and by reason of their size and facilities and diverse locations ,are able to exercise a great control of the market in all places, and but for the competition of the smaller packers, like these respondents, would exercise an almost absolute control over prices, and a substantial monopoly.

That these respondents do not, nor does their successor, pay any freight to railroads whatever, except that in certain months of each year, they are usually unable to get a high enough grade of beef for their trade, in Chicago, and therefore buy in the Kansas City market in those months cattle by the carload, which they ship to Chicago and kill at their said plant, and occasionally purchase a few hogs, and sometimes lambs in the Louisville, Ky., market; that the freight paid for this service in the five years last past was for cattle $10,911.61, for lambs $3,099.05, for hogs $169.34, making a total of $14,180, or a yearly average of $2,836. That otherwise respondents substantially pay no freight.

That all coal, salt and supplies are furnished at a lump price by weight F. O. B. cars at the plant, and any freight paid therefor is by re-

spondent as agents of the seller and deducted from the lump sale price on settlement.

That in the past almost the entire product of the plant, excepting by-products, has been sold to the local city trade, and not handled by rail; that the freight on whatever shipments are made is paid by the consignee and not for or by these respondents or their successor.

That the establishing of the plant of these respondents at the yards takes up about 125 feet of sidetrack and there is much other property available for other plants on the sidetrack and switches of the said Stock Yards Company.

That said $50,000 is to be paid solely as an assistance to the erection of said new plant and enters into the capitalization thereof, and was and is purely a legitimate business transaction, promoting the interests of these respondents, the Stock Yards Company, the railroads, the stock raisers, the labor market and the retail butcher and consumer."

The benefit to the Pfaelzers is not as shippers, but as manufacturers. The answers show that the Pfaelzers pay substantially no freight, that in the last five years they have paid less than $15,000 where it has been necessary for them to go outside to get the necessary grade of cattle and lambs, and then to none of the other defendants. There might be contingencies where this would be unnecessary, and they would pay no freight at all. This shows that the Pfaelzers, as freight-payers, are of no benefit whatever to the Union Stock Yards, and the payment could not have been intended by them as a rebate or discrimination for freight. The few carloads for which they paid freight in a year would not be one-thousandth part of the freight paid for all the live stock handled at the stock yards,

and such an infinitesimal per cent could have no effect upon a competitor to put anyone to such a disadvantage in the packing business as to affect trade. The payment is just what it purports to be and what it is alleged to be in the answers, namely, an assistance to them in their business, to keep up the live stock market in Chicago, and promote competition.

If, then, the benefit or preference inures to the Pfaelzers as manufacturers and not as shippers, and it does not militate against any individual as a shipper or patron of the common carriers, it is nothing of which anyone can complain, least of all those who receive the great benefit—the public, through the Attorney General.

THE ESSENCE OF THE MATTER.

(1) Promotion of business at the stock yards, both of the Stock Yards Company and others, increasing competition assisting a market, giving employment, supplying the public, giving business to railroads and others, and necessity to continue the custom is a sound reason.

(2) No one has a right to demand this preference of a carrier. It deprives no one of anything as a shipper in his rights to equal service.

(3) No one feels the preference and no one can be located who is harmed or who is discriminated against.

(4) The Stock Yards Company is not acting as a carrier and is protecting its own interests as a matter of self-preservation against other yards ex-

isting or which may be created about whose business there may be no question of a right to donate. And this whether it be a carrier or not.

We submit, on the facts before the court the court cannot say that the payment is a discrimination, or by a carrier, or against anybody; but it can say on the answers that the payment is a reasonable act; just, in accordance with a custom, promotes competition and discriminates against no one as a shipper, and is not in the line of carrying by a carrier or service rendered, and should have been so decided.

Respectfully,

WILLARD M. MCEWEN,
Solicitor for the Pfaelzers.

JOSEPH WEISSENBACH,
Of Counsel.

UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION, *v.* UNION STOCK YARD & TRANSIT COMPANY OF CHICAGO.

CHICAGO JUNCTION RAILWAY COMPANY *v.* UNITED STATES.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

Nos. 621, 622. Argued October 24, 1912.—Decided December 9, 1912.

In view of continuity of operation, manner of compensation for, and performance of, services in connection with interstate transportation, the Union Stock Yard & Transit Company and the Chicago Junction Railway Company are subject to the terms of the Act to Regulate Commerce and must conform to its requirements in regard to filing tariff and also desist from unlawful discriminations to shippers.

The Interstate Commerce Act, as amended by the Elkins and Hepburn Acts, extends to all terminal facilities and instrumentalities.

Service that is performed wholly in one State is still subject to the Act to Regulate Commerce if it is a part of interstate commerce.

The duties of a common carrier in the transportation of live stock begin with their delivery to be loaded and end only after unloading and delivery, or offer of delivery, to the consignee. *Covington Stock Yards Co.* v. *Keith*, 139 U. S. 128.

The character of the service rendered in regard to carriage of interstate freight and not the manner in which the goods are billed determines whether the commerce is interstate or not; and so *held* that although neither the Stock Yard Company nor the Junction Railway Company issues through bills of lading, still, as the goods handled are in transit from one State to another, both corporations are engaged in interstate commerce.

Where two corporations, the controlling stock of both of which is owned by one holding company, operate jointly, one handling only the stock yard business and the other the business of transferring and switching cars containing freight in interstate transit, both are to be deemed railroads within the terms of the Act to Regulate Commerce and are subject to its requirements.

While the Act to Regulate Commerce excludes transportation wholly within a State, a corporation owning a railroad and doing other business in connection with freight in interstate carriage cannot, by leasing the railroad to another company for a share of the profits, exempt itself from the operation of the law.

A contract by an interstate carrier by railroad to pay a part of the cost of the plant of one of its shippers who agrees only to handle goods moved by it, *held* in this case to be an illegal discrimination and rebate under the Act to Regulate Commerce.

A shipper receiving a bonus from the carrier for erecting a plant on the line of the carrier has an undue advantage over a shipper not receiving any bonus or a smaller bonus.

It is the object of the Interstate Commerce Act and the Elkins Act to prevent favoritism by any means or device whatsoever and to prohibit all practices running counter to the purpose of placing all shippers upon equal terms.

192 Fed. Rep. 330, affirmed in part and reversed in part.

THE facts, which involve the application of §§ 2, 6 and 20, of the Interstate Commerce Act, and of § 1 of the Elkins Act, to the Union Stock Yard & Transit Company of Chicago and the Chicago Junction Railway Company, are stated in the opinion.

Mr. Assistant Attorney General Adkins and *Mr. William E. Lamb,* Special Assistant to the Attorney General, for the United States, appellant in No. 621 and appellee in No. 622:

The Stock Yard Company and the Junction Company are common carriers engaged in the transportation of property wholly by railroad from one State to another.

Both companies are engaged in the transportation of property wholly by railroad from one State to another.

Property is in interstate commerce from its delivery to the carrier for shipment into another State until it is there delivered to the consignee. *Coe* v. *Erroll,* 116 U. S. 517; *The Daniel Ball,* 10 Wall. 557; *Henderson* v. *New York,* 92 U. S. 271; *Wabash R. Co.* v. *Illinois,* 118 U. S.

557; *Rhodes* v. *Iowa*, 170 U. S. 412; *Heyman* v. *Southern Ry. Co.*, 203 U. S. 270.

The commerce act specifically defines "railroad" and "transportation" to include all property and every instrumentality used, and every step taken in such interstate commerce. Section 1, act of June 29, 1906.

Both companies are engaged in transportation. Their activities are within both the judicial and legislative definitions.

It is immaterial if the distance be short or cars only be hauled. *M. P. Ry.* v. *Gwinn Co.*, 55 Kansas, 525.

Cars are the subject of carriage. *R. R. Co.* v. *R. R. Co.*, 109 Illinois, 135; *United States* v. *C. & N. W. Ry. Co.*, 157 Fed. Rep. 619.

A towboat may be engaged in interstate commerce. *Moran* v. *New Orleans*, 112 U. S. 69.

Such transportation is wholly by railroad and from one State to another. *Int. Com. Comm.* v. *C., N. O. & T. P. Ry. Co.*, 162 U. S. 184; *Southern Pac. Terminal Co.* v. *Int. Com. Comm.*, 219 U. S. 498; *United States* v. *Colo. & N. W. R. Co.*, 157 Fed. Rep. 321; *Leonard* v. *Kansas City &c. Ry. Co.*, 13 I. C. C. Rep. 573; *Standard Oil Co.* v. *United States*, 179 Fed. Rep. 614; *Denver & R. G. R. Co.* v. *Int. Com. Comm.*, 195 Fed. Rep. 968.

Both the Stock Yard Company and the Junction Company are common carriers.

Definition of common carriers. *Niagara* v. *Cordes*, 21 How. 7, 22; Redfield on Carriers &c., 1; *Dwight* v. *Brewster*, 1 Pick. 50; *Wiggins Ferry Co.* v. *R. R. Co.*, 107 Illinois, 450; *Gordon* v. *Hutchinson*, 1 W. & S. 285.

Carriers of live stock are common carriers. *Myrick* v. *Mich. Cent. R. Co.*, 107 U. S. 106; 5 Enc. Law (2d ed.), 428.

Under their charters and by reason of their activities, both corporations come within these definitions.

Each was organized as a railroad company. They cannot deny their charters. *Randolph* v. *Post*, 93 U. S. 502;

Improvement Co. v. *Slack*, 100 U. S. 648; *Union Trust Co.* v. *Randall*, 20 Kansas, 515.

Under the Illinois constitution they are common carriers. Art. 11, § 12.

The Junction Company was conceded to be a common carrier.

The properties of both companies are railroads and they are engaged in transportation within definitions of Hepburn Act.

They hold themselves out to the general public to perform these services for hire. *Union Stock Yards Co.* v. *United States*, 169 Fed. Rep. 406.

The courts have held stock-yards to be common carriers engaged in interstate commerce. *United States* v. *Union Stock Yards*, 161 Fed. Rep. 919; aff'd, 169 Fed. Rep. 404; *United States* v. *Sioux City Stock Yards*, 162 Fed. Rep. 556; *Belt Ry. Co.* v. *United States*, 168 Fed. Rep. 542; *United States* v. *Illinois Terminal Ry. Co.*, 168 Fed. Rep. 546; *McNamara* v. *Wash. Terminal Co.*, 37 App. D. C. 384. See also *Covington Stock Yard Company* v. *Keith*, 139 U. S. 128; *Walker* v. *Keenan*, 73 Fed. Rep. 755.

The Stock Yard Company and Junction Company are in reality partners and are but one system in the eyes of the law. *Meehan* v. *Valentine*, 145 U. S. 623; *Southern Pac. Terminal Co.* v. *Int. Com. Comm.*, 219 U. S. 498; *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Milwaukee Refrig. Transit Co.*, 142 Fed. Rep. 247; 145 Fed. Rep. 1007; and *Kendall* v. *Klapperthal*, 52 Atl. Rep. 92.

The payment under the Pfælzer contract would constitute a rebate, concession, and unlawful discrimination. Act to Regulate Commerce, §§ 2, 3; Elkins Act, § 1; *Int. Com. Comm.* v. *Reichmann*, 145 Fed. Rep. 235; *Thomas* v. *United States*, 156 Fed. Rep. 897; *United States* v. *Milwaukee Refrig. Transit Co.*, 142 Fed. Rep. 247; 145 Fed. Rep. 1007; *C. & A. Ry. Co.* v. *United States*, 156 Fed. Rep.

558; *United States* v. *D., L. & W. R. Co.*, 152 Fed. Rep. 269; *A., T. & S. F. Ry. Co.* v. *United States*, 170 Fed. Rep. 250; *Wight* v. *United States*, 167 U. S. 512; and *N. Y., N. H. & H. R. R. Co.* v. *Int. Com. Comm.*, 200 U. S. 398; *Armour Packing Co.* v. *United States*, 209 U. S. 71.

Such payment would, therefore be unlawful on the part of the Stock Yard Company and the Investment Company, and the receipt thereof would be unlawful on the part of the Pfælzers. See cases cited *supra*.

The Commerce Court had jurisdiction of the bill. Sections 2 and 3, Elkins Law; §§ 2, 3 and 6, Act to Regulate Commerce.

The decree in appeal 621 must be reversed and that in appeal 622 affirmed.

Mr. Ralph M. Shaw for appellees in No. 621 and appellant in No. 622:

The Act to Regulate Commerce does not apply to all carriers or to all commerce.

For the purposes of this case, before a corporation is subject to the provisions of the act it must simultaneously be not only a common carrier, but one wholly by railroad, and also one engaged in the transportation of passengers or property from one State or Territory to another.

A common carrier by railroad wholly within one State can so transact its business as not to subject itself to the provisions of the Act to Regulate Commerce. *Cincinnati &c. Ry. Co.* v. *Int. Com. Comm.*, 162 U. S. 184, 191.

"The Junction Co." is not a common carrier subject to the provisions of the Act to Regulate Commerce, because it is not engaged in the transportation of passengers or property from one State to another. It lies wholly within one State; it does not issue bills of lading; it does not deal either with the consignor or the consignee with respect to either inbound or outbound freight; it does not receive as compensation for its services any proportion of a

through rate, otherwise known as a "conventional division of rates."

When it hauls with its own motive power any freight on its own tracks it receives a flat switching charge therefor irrespective of the origin or destination or character of the freight.

When foreign carriers use its rails, they pay to it a fixed trackage sum per car irrespective of the origin, destination or character of the freight or of the revenue derived therefrom. *Int. Com. Comm.* v. *C., K. & S. R. Co.*, 81 Fed. Rep. 783; *Int. Com. Comm.* v. *B. Z. & C. Ry. Co.*, 77 Fed. Rep. 942; *Gracie* v. *Palmer*, 8 Wheat. 605.

The relation of the Junction Company to freight cars loaded with interstate commerce, which it hauls with its own motive power from receiving tracks in Illinois to unloading platforms in Illinois, is analogous to and identical with the relationship of a tugboat to an incoming steamer.

A tugboat is not a common carrier. *The Steamer Webb*, 14 Wall. 406, 414; *The Margaret*, 94 U. S. 494; *The L. P. Dayton*, 120 U. S. 337; *The Propellor Burlington*, 137 U. S. 386; *The J. P. Donaldson*, 167 U. S. 599, 603.

The "Stock Yard Co." is not subject to the provisions of § 1 of the Act to Regulate Commerce because it is not a common carrier; nor engaged in the transportation of property or passengers from any point in one State to any point either in or without a State. *Kentucky & Ind. Bridge Co.* v. *L. & N. R. R. Co.*, 37 Fed. Rep. 567; *Cattle Raisers' Assn.* v. *Ft. W. & D. C. R. Co.*, 7 I. C. C. Rep. 513, 536.

When an act of Congress has been construed by the courts and thereafter the act is amended or reënacted, and the amendments do not affect in any way whatsoever the provisions so construed, thereafter the courts will assume that Congress has approved and adopted the judicial interpretation placed upon its language; also when a statute has been officially interpreted by the body charged

with its execution, and thereafter the act is amended, and the amendments of Congress do not in any respect change the particulars so interpreted, the courts will assume that Congress has approved and adopted such interpretation irrespective of what the courts might have originally determined to be the correct interpretation. *United States* v. *Mooney*, 116 U. S. 104, 106; *Kepner* v. *United States*, 195 U. S. 100, 124; *The Abbottsford*, 98 U. S. 444; *Diaz* v. *United States*, 223 U. S. 442, 454; *Standard Oil* v. *United States*, 221 U. S. 1, 59; *N. Y., N. H. & H. R. R. Co.* v. *Int. Com. Comm.*, 200 U. S. 361, 401; *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479; *United States* v. *Falk*, 204 U. S. 143, 152; *United States* v. *Hermanos*, 209 U. S. 337.

The "Investment Company" is not subject to the provisions of § 1 of the Act to Regulate Commerce, because it is not a common carrier, nor engaged in the transportation of property or passengers from any point in one State to any point, either within or without the State.

Irrespective of what the decision of the court may be either as to the "Stock Yard Company," or as to "The Junction Company," the mere fact that "The Investment Company" owns shares of stock of the two companies does not destroy its identity or merge it into the identity of either of the other two companies. *United States* v. *Del. & Hud. Co.*, 213 U. S. 366; *Coal Belt Electric Ry. Co.* v. *Peabody Coal Co.*, 230 Illinois, 164.

The United States Commerce Court not only had jurisdiction to determine whether the assailed contract was or was not unlawful, but it was its duty to determine such question. Elkins Act, §§ 2, 3.

When the jurisdiction of a court of equity is invoked in good faith, the court will decide all of the questions presented by the case, even though it decides the jurisdictional question against the person invoking the jurisdiction. *Siler* v. *L. & N. R. R. Co.*, 213 U. S. 175; *Michigan*

R. R. Tax Cases, 138 Fed. Rep. 223; *Burton* v. *United States*, 196 U. S. 283; *Williamson* v. *United States*, 207 U. S. 425; *Hopkins* v. *Grimshaw*, 165 U. S. 342; *Ober* v. *Gallagher*, 93 U. S. 199; *United States* v. *Union Pac. Ry. Co.*, 160 U. S. 1; 2 Current Law, 623.

The Pfælzer contract is not illegal. It is made for the purpose of maintaining a desirable customer at the live stock market at the Stock Yards.

It is not made by a common carrier or on behalf of a common carrier with a shipper, nor is it based upon the transportation of any property whatsoever.

It has nothing to do with the rates charged or paid for the transportation of any property. *Willoughby* v. *Chicago Junction Railways Co.*, 50 N. J. Eq. 656.

The Interstate Commerce Act should be interpreted *in pari materia* with the Anti-trust Act. It should be held that a contract, not made by a common carrier subject to the Act to Regulate Commerce, is not prohibited by law if its main purpose and chief effect is to promote the lawful business of the parties making it. *Hopkins* v. *United States*, 171 U. S. 578; *Bigelow* v. *Calumet & Hecla Mining Co.*, 167 Fed. Rep. 704, 712; *Standard Oil Co.* v. *United States*, 221 U. S. 1; *American Tobacco Co.* v. *United States*, 221 U. S. 106.

Mr. Willard M. McEwen and *Mr. Joseph Weissenbach*, filed a brief for appellees, Louis Pfælzer & Sons:

The making of donations to assist enterprises to aid the business of a corporation is a legitimate object of contract and is not against public policy. *Ellerman* v. *Chicago Junction Rys. Co.*, 49 N. J. Eq. 217; *Willoughby* v. *Chicago Junction Rys. &c. Co.*, 50 N. J. Eq. 656; *Richelieu Hotel Co.* v. *Milw. Encampment Co.*, 140 Illinois, 248, 263–264; *B. S. Green Co.* v. *Blodgett*, 159 Illinois, 169, 174; *Central Lumber Co.* v. *Kelter*, 201 Illinois, 503; *Northern Pac. R. Co.* v. *Spokane*, 56 Fed. Rep. 915; *S. C.*, 64 Fed.

Rep. 506, and cases cited; *McGeorge* v. *Big Stone Gap Imp. Co.*, 57 Fed. Rep. 262; *Vandall* v. *S. S. F. Dock Co.*, 40 California, 83; *People* v. *Eel River &c. R. R. Co.*, 98 California, 665; *Temple St. Ry.* v. *Hellman*, 103 California, 634; *Texas & St. L. R. R. Co.* v. *Robards*, 60 Texas, 545; *Whetstone* v. *Ottawa University*, 13 Kansas, 320; *Town Co.* v. *Russell*, 46 Kansas, 382; *Hasson* v. *Venango Bridge Co.*, 1 Pa. Dist. Rep. 521; *Leslie* v. *Lorillard*, 110 N. Y. 519; *Louisville & Nashville R. R. Co.* v. *Literary Society*, 91 Kentucky, 395.

Discrimination backed by a sound reason (as distinguished from motive) in a matter where an individual has no right to demand the privilege as a public service undertaken to be furnished by a carrier as such to all alike and which deprives him of nothing which he is entitled to, or subjects him to no disadvantage in the public service rendered to him, is not forbidden by the law. *Memphis Frt. Bureau* v. *Ft. Smith Ry. Co.*, 13 I. C. C. Rep. 1; *Int. Com. Comm.* v. *L. & N. R. Co.*, 73 Fed. Rep. 409; *Central Yellow Pine Assn.* v. *V. S. & P. Ry. Co.*, 10 I. C. C. Rep. 193; *United States* v. *Wells-Fargo*, 161 Fed. Rep. 606; *Int. Com. Comm.* v. *Alabama Ry. Co.*, 74 Fed. Rep. 715; *Cole* v. *Rowen*, 13 L. R. A. 848; *Donovan* v. *Pa. Ry. Co.*, 199 U. S. 278; *Gamble* v. *C. & N. W.*, 168 Fed. Rep. 164; *United States* v. *Oregon R. & Nav. Co.*, 159 Fed. Rep. 982; *Central Stock Yds. Co.* v. *L. & N. R. Co.*, 24 I. C. C. Rep. 339; 118 Fed. Rep. 113; 55 C. C. A. 63; 192 U. S. 568; *Hart* v. *Choctaw, Ok. & G. Ry.*, 118 Fed. Rep. 169; *Missouri P. R. Co.* v. *Nebraska*, 164 U. S. 404; *N. P. Ry.* v. *Railroad Comm.*, 28 L. R. A. (N. S.) 1021; *Int. Com. Comm.* v. *Alabama Midland R. Co.*, 168 U. S. 144; *L. & N. R. Co.* v. *Behlmer*, 175 U. S. 684.

What a donation is depends both upon its effect as to all concerned and the intention of the parties as to application. These are the elements of the discrimination and are questions of fact to be proved by the peti-

tioner. *Int. Com. Comm.* v. *L. & N. R. Co.*, 73 Fed. Rep. 409; *Int. Com. Comm.* v. *Alabama Midland R. Co.*, 168 U. S. 144, 170; *Root* v. *L. I. R. Co.*, 114 N. Y. 300; 4 L. R. A. 33; *Texas* v. *Int. Com. Comm.*, 162 U. S. 197; *Int. Com. Comm.* v. *Baltimore R. Co.*, 43 Fed. Rep. 37; *S. C.*, 145 U. S. 263.

The presumption is in favor of fairness and legality. *Int. Com. Comm.* v. *C. G. W. R. Co.*, 209 U. S. 108.

MR. JUSTICE DAY delivered the opinion of the court.

These are appeals from a decree entered by the Commerce Court in an action begun by the United States on the application of the Attorney General at the request of the Interstate Commerce Commission against the Union Stock Yard and Transit Company of Chicago an Illinois corporation (hereinafter called the "Stock Yard Company"), the Chicago Junction Railway Company, an Illinois corporation (hereinafter called the "Junction Company"), and the Chicago Junction Railways and Union Stock Yards Company, a New Jersey corporation (hereinafter called the "Investment Company"), and David Pfælzer, Abe Pfælzer and Jones L. Pfælzer, a copartnership doing business under the firm name and style of Louis Pfælzer & Sons. The bill sought to enjoin violations of §§ 2, 6 and 20 of the Interstate Commerce Act, as amended 24 Stat. 379, c. 104; 34 Stat. 584; 36 Stat. 539, c. 309 and of § 1 of the Elkins Law as amended 34 Stat. 584, c. 3591. Its prayer was that an injunction should issue to restrain the Stock Yard Company and the Junction Company from further engaging in interstate commerce until they had filed tariffs as required by § 6 of the act and to restrain the performance of a certain contract with the Pfælzers, and that the Stock Yard Company and the Junction Company be required to file the statements and reports provided by § 20 of the act.

The Commerce Court held that neither the Stock Yard Company nor the Investment Company was a common carrier, and that it had no jurisdiction to determine whether the contract would amount to an unlawful discrimination or advantage, or rebate, and dismissed the bill as to the Stock Yard Company and the Investment Company and as to the Pfælzers. As to the Junction Company, it held that it was a common carrier subject to the Interstate Commerce Act and obliged to file its tariffs as required by the statute. It further held that, since there was no allegation in the bill that the Interstate Commerce Commission had by general or special order required the Stock Yard Company or the Junction Company to file statements and reports under § 20, it could not issue mandamus to make such statements and reports. 192 Fed. Rep. 330.

The Government appealed from the dismissal of the bill as to the Stock Yard Company, the Investment Company and the Pfælzers, which is case No. 621. It, however, makes no contention against the holding of the Commerce Court as to the construction of § 20. The Junction Company appealed from the decision of the Commerce Court as to it, which appeal is case No. 622.

The correctness of the decision and decree of the Commerce Court is submitted upon facts which are practically undisputed. The Stock Yard Company was incorporated under a special act of the legislature of Illinois, February 13, 1865; Laws 1865, v. 2, p. 678, which authorized it to locate, construct and maintain near the southerly limits of the City of Chicago:

" . . . All the necessary yards, inclosures, buildings, structures, and railway lines, tracks, switches, and turn-outs, aqueducts, for the reception, safe-keeping, feeding, and watering, and for the weighing, delivery, and transfer of cattle and live stock of every description, and also dead and undressed animals that may be at or pass-

ing through or near the city of Chicago, and for the accommodation of the business of a general union stock yard for cattle and live stock, including the erection and establishment of one or more hotel buildings, and the right to use the same; . . . to make advances of money upon such cattle and live stock, for freight or other purposes as may become expedient. . . ."

The charter further provided:

"That said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be selected for its said yards, so as to connect, outside of the city of Chicago, the same with the tracks of all the railroads which terminate in Chicago, the lines of which enter the city on the south between the lake shore and the southwest corner of said city, . . . and to make connections with such suitable sidetracks, switches, and connections as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks of such company or companies which now is or hereafter may be constructed, for the purposes aforesaid, as may be agreed upon between the parties; . . . and to transport and allow to be transported thereon between said railroads and cattle yards, all cattle and live stock and persons accompanying the same to and from said yards, and may also transport and allow to be transported between the railroads entering said city, . . . freight and property of every kind as well as stock and cattle. . . ."

After its creation it acquired real estate, constructed and operated stock yards, with a stock market, built a hotel for the accommodation of its patrons, and constructed in the stock yards district about 300 miles of railroad track consisting of main lines connecting with the

trunk lines entering Chicago and a large number of switches to the various industries which had been established adjacent to such tracks.

Prior to December 15, 1897, the Stock Yard Company carried on the stock yards and railroad business, and, although it had regular charges for the services it performed, it filed no tariffs with the Interstate Commerce Commission and concurred in none. On December 15, 1897, the Stock Yard Company leased all of its railroad tracks and equipment for a term of fifty years to a corporation known as the Chicago and Indiana State Line Company (hereinafter called the "State Line Company"), retaining for itself the loading and unloading platforms and facilities used in connection with its stock yards business. This lease covered all its railroad and railroad tracks, switches, etc.; roundhouse, repair shops, machine shops, coal chutes, etc., then in existence or theretofore used by the Stock Yard Company in connection with its railroad; and all and singular the equipment and the telegraph lines, instruments and appurtenances owned or possessed by the Stock Yard Company and used by it in conducting its railroad business. By the terms of the lease the State Line Company was given the right in the future to maintain and operate upon the lands of the Stock Yard Company additional side tracks and switch tracks and other appurtenances necessary to reach industrial plants.

Afterwards the State Line Company consolidated with the Chicago, Hammond & Western Railroad Company, and the consolidated company became known as the Chicago Junction Railway Company (defendant herein) and, in addition to the railroad leased from the Stock Yard Company, operated a belt line around the City of Chicago. In November, 1907, the Junction Company sold the belt line to the East Chicago Belt Railroad Company, retaining the tracks which had been leased by the Stock Yard Company. The equipment operated by the Junction

Company, consisting of locomotives and rolling stock, is owned by the Stock Yard Company, but the Junction Company employs its own engineers and crews.

The tracks of the Junction Company are frequently used by the trunk lines to connect the eastern and western systems and to deliver shipments originating without the State to the platforms of the Stock Yard Company, for which service they pay the Junction Company a trackage charge of a fixed sum per car. Large numbers of carload lots of dead freight from points without the State are placed on the receiving tracks of the Junction Company bearing transfer cards showing the destination of the cars, and the Junction Company delivers the cars either to the consignee, if situated on its tracks, or to the receiving track of the forwarding carrier. It is paid by the trunk lines a fixed charge for this service, which the latter absorb. The Junction Company upon the order of the trunk lines places cars for loading by shippers in the stock yards district and after they are loaded hauls them to the receiving tracks of the trunk lines, and it receives from the trunk lines a fixed amount for this service, which is absorbed by the latter. Less than carload lot freight is delivered at the freight depot known as the Union Freight Station and placed in cars by the Junction Company which transports them to the receiving tracks of trunk lines, and for this service the trunk lines pay the Junction Company five cents per hundred weight. Sometimes such freight is hauled from the industries in the stock yards district to the Union Freight Station by the Junction Company and distributed in the cars. The Junction Company receipts for the less than carload lot freight in the name of the trunk lines, such receipts being exchangeable for bills of lading at the office of the trunk lines, and all charges paid to the Junction Company are receipted for in the name of the trunk lines and remitted to them. The Junction Company has an arrangement with the Balti-

more & Ohio Railroad Company whereby it performs a like service for such company as to the less than carload lot freight brought by it to the Union Freight Station and destined to points beyond the State. Shipments of horses are transported by the trunk lines to the loading platforms of the Stock Yard Company and there picked up by the Junction Company and hauled to the unloading chutes for horses, and the Junction Company receives, besides the trackage charge, a certain amount per car for this service. A large part of the service thus performed by the Junction Company is in connection with interstate shipments. The Junction Company does not issue any bills of lading with respect to any kind of freight.

After leasing its railroad property to the Junction Company, the Stock Yard Company continued to operate its stock yard facilities for loading and unloading cattle and other live stock bound for and coming from points outside the State, and to feed and water live stock in transit over the lines of trunk line carriers, and also to feed, bed and water live stock shipped to consignees doing business in the stock yards district.

The employés of trunk lines bringing live stock to the stock yards turn over the waybills accompanying such shipments, with what are called "live stock stubs" attached, to the employés of the Stock Yard Company, who use the waybills in unloading and counting the stock, and the waybills and stubs are then sent to the auditor of the Stock Yard Company (being also the auditor of the Junction Company) who retains the stubs and forwards the waybills to the local agents of the trunk lines. The Stock Yard Company advances the charges on such shipments to the trunk lines and collects from the consignees, usually commission men doing business at the stock yards, the moneys it has so advanced for their accommodation.

The Junction Company publishes tariffs showing the charges which it exacts for its services, such tariffs being

in general circulation in Chicago, especially about the stock yards district, but they were not filed with the Interstate Commerce Commission. Prior to 1907, the Junction Company, while owning railroad facilities in Indiana, had filed tariffs with the Interstate Commerce Commission, but upon the sale of such properties cancelled the tariffs. It was the belief of the Government and of the Junction Company that all tariffs and concurrences had been cancelled, but it is shown by a stipulation which the parties have filed that since the issues were made up it has been discovered that one particular concurrence through inadvertence was not cancelled.

The Investment Company is a holding company and owns over ninety per cent. of the shares of the Stock Yard Company and practically all of the shares of the Junction Company.

As to the contract with the Pfælzers: They were members of a copartnership (since incorporated) engaged in the slaughtering business, their plant being located in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yard Company. They purchased cattle from time to time outside the City of Chicago and in States other than Illinois and shipped them to the partnership at the stock yards, where they were handled as hereinbefore stated for delivery to the consignee. The freight charges on such business averaged for the five years prior to the filing of the Pfælzers' answer about $2,800 annually. The amount of freight consigned to the Pfælzers tends to increase the business of the Stock Yard Company and the Junction Company and therefore the revenue of each.

In 1906 the Department of Agriculture required the Pfælzers to make changes in their plant; in 1908 it directed them to erect a new plant, and in 1909 they were notified that the Government would deny to them further inspection of the products of their plant. They then proposed

to locate in Kansas City, Missouri, but upon negotiation with the Stock Yard Company made the contract under consideration here. This contract provided that upon the erection by the Pfælzers of a modern slaughtering, packing and canning plant adjacent to the stock yards in Chicago, costing a certain sum and having a required capacity, the Stock Yard Company would pay them $50,000, and the Pfælzers agreed that all live stock slaughtered or canned by them within a radius of 200 miles would either be purchased at such stock yards or pass through and use them, the customary yardage, tolls and charges to be paid thereon, or that the Pfælzers would pay full tolls and charges on live stock the same as if it had been sent to the stock yards for sale and had there been bought by them; and that for fifteen years they would conduct all their slaughtering, packing and canning business at such plant and not interest themselves directly or indirectly in any other plant or in any other stock yards. The Investment Company guaranteed the performance of the contract by the Stock Yard Company.

It is stated in the answer of the Stock Yard Company and stands admitted in the case that there are other competitive stock yards in the United States which have built up their business in competition with it by offering and giving inducements, either in the shape of land or money, to packing houses and other industries to locate at or near their yards.

From this statement it is apparent that the Stock Yard Company was organized for the purpose of maintaining a stock yard, with the usual facilities of such yards as to loading and unloading and caring for freight, and it was authorized to and did own and operate a railroad system, transporting cars to and from trunk lines in the course of their transportation from beyond the State and to points outside of the State. This service, so far as the railroad

and its operation is concerned, is now performed by the Junction Company. The Stock Yard Company still continues to perform the customary stock yard operations, but by means of the lease to the Junction Company it has divested itself of the operation of the railroad system which it was authorized by its charter to construct and operate and which for many years before the lease it did in fact operate. The Stock Yard Company, under the lease, still gets, however, two-thirds of the profits received by the Junction Company for performing the service in connection with the railroad transportation. This joint service now takes the place of the single service formerly rendered by the Stock Yard Company. The stock of both these companies is held in common ownership by the Investment Company, and it appears that the Investment Company guarantees the contracts, or at least some of them, of the Stock Yard Company.

In view of this continuity of operation, the manner of compensation and the performance of services in connection with interstate transportation by railroads such as are described, are the Stock Yard Company and the Junction Company subject to the terms of the Act to Regulate Commerce and bound to conform to its requirements?

The Interstate Commerce Act, as amended by the Hepburn Act, 34 Stat. 584, c. 3591, § 1, applies to common carriers engaged in the transportation of persons or property from State to State wholly by railroad, and the term railroad is defined to include "all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property"; and transportation is defined to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage,

irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

That the service is performed wholly in one State can make no difference if it is a part of interstate carriage. "The transportation of live stock," said this court in *Covington Stock-Yards Co.* v. *Keith*, 139 U. S. 128, 136, in treating of the duties of common carriers, irrespective of the Act to Regulate Commerce, "begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee." In this connection see *Coe* v. *Errol*, 116 U. S. 517; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498.

The fact that the performance of the service is distributed among different corporations having common ownership in a holding company which controls an interstate system was held in *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, *supra*, to make no difference, where the service to be performed was a part of the carriage of freight by railroad in interstate commerce. Nor does it make any difference that neither the Junction Company nor the Stock Yard Company issues through bills of lading. It is the character of the service rendered, not the manner in which goods are billed, which determines the interstate character of the service. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, *supra*; *Ohio R. R. Comm.* v. *Worthington*, 225 U. S. 101.

Together, these companies, as to freight which is being carried in interstate commerce, engage in transportation within the meaning of the act and perform services as a railroad when they take the freight delivered at the stock yards, load it upon cars and transport it for a substantial distance upon its journey in interstate commerce, under

a through rate and bill furnished by the trunk line carrier, or receive it while it is still in progress in interstate commerce upon a through rate which includes the terminal services rendered by the two companies, and complete its delivery to the consignee. They are common carriers because they are made such by the terms of their charters, hold themselves out as such and constantly act in that capacity, and because they are so treated by the great railroad systems which use them. In *Union Stock Yards Co.* v. *United States*, 169 Fed. Rep. 404, Mr. Justice Van Devanter (while a Circuit Judge), speaking for the Court of Appeals, said (406):

"Its [the Stock Yards Company's] operations . . . include the maintenance and use of railroad tracks and locomotives, the employment of a corps of operatives in that connection, and the carriage for hire over its tracks of all live stock destined to or from the sheds or pens, which, in effect, are the depot of the railroad companies for the delivery and receipt of shipments of live stock at South Omaha. The carriage of these shipments from the transfer track to the sheds or pens and vice versa is no less a part of their transit between their points of origin and destination than is their carriage over any other portion of the route. True, there is a temporary stoppage of the loaded cars at the transfer track, but that is merely incidental, and does not break the continuity of the transit any more than does the usual transfer of such cars from one carrier to another at a connecting point. And it is of little significance that the stock-yards company does not hold itself out as ready or willing generally to carry live stock for the public, for all the railroad companies at South Omaha do so hold themselves out, and it stands ready and willing to conduct, and actually does conduct, for hire a part of the transportation of every live stock shipment which they accept for carriage to or from that point, including such shipments as are interstate."

We think that these companies, because of the character of the service rendered by them, their joint operation and division of profits and their common ownership by a holding company, are to be deemed a railroad within the terms of the act of Congress to regulate commerce, and the services which they perform are included in the definition of transportation as defined in that act. It is the manifest purpose of the act to include interstate railroad carriers, and by its terms the act excludes transportation wholly within a State. In view of this purpose and so construing the act as to give it force and effect, we think the Stock Yard Company did not exempt itself from the operation of the law by leasing its railroad and equipment to the Junction Company, for it still receives two-thirds of the profits of that company and both companies are under a common stock ownership with its consequent control. We therefore think the Commerce Court was right in holding that the Junction Company should file its rates with the Interstate Commerce Commission and that it should also have held the Stock Yard Company subject to the provisions of the Interstate Commerce Acts.

As to the Pfælzer contract, both parties concede the authority of the Commerce Court to pass upon this subject and no objection was made as to the manner and form in which the jurisdiction of that court was invoked. There being no objection taken to the method of proceeding, we think, if this contract is within the prohibitions of the act, that the Commerce Court had the right to entertain the bill and to enjoin the performance of the contract. Sections 2 and 3 of the Elkins Act. It is contended that this contract is violative of certain features of the Act to Regulate Commerce and of the Elkins Act. Section 2 of the former and § 1 of the latter provide:

"SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge,

demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

"SEC. 1 . . . It shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. . . ."

This court has had frequent occasion to comment upon the purpose of Congress in the passage of these laws to require equal treatment of all shippers and to prohibit unjust discrimination in favor of any of them. *New York, New Haven & Hartford R. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361; *Armour Packing Co.* v. *United States*, 209 U. S. 56; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *Chicago & Alton R. R. Co.* v. *Kirby*, 225 U. S. 155.

By § 2 of the Act to Regulate Commerce the carrier is guilty of unjust discrimination, which is prohibited and declared unlawful, if by any rebate or other device it charges one person less for any service rendered in the

transportation of property than it does another for a like service. The Elkins Act makes it an offense for any person or corporation to give or receive any rebate, concession or discrimination in respect to the transportation of property in interstate commerce whereby any such property shall be transported at a rate less than that named in the published tariff or whereby any other advantage is given or discrimination is practiced. By the very terms of the contract it is evident that the interest of the Stock Yard Company and also of the Junction Company is in the profit to be made in receiving and delivering, handling and caring for and transporting live stock, shipments of which, to the extent stated, are made in interstate commerce. The contract provides that if the Pfælzers construct a packing plant adjacent to the stock yards of the Stock Yard Company they shall receive $50,000, and it obligates them to maintain and operate the plant for a period of fifteen years and buy and use in their slaughtering business such live stock only as moves through such stock yards, and if not so bought to pay the regular charges thereon as if the same had moved into the stock yards and had been there purchased by them. In other words, this plant in effect may pay for the services of the Stock Yard Company, up to the sum of $50,000, with the bonus given to the Pfælzers for the location of their plant in juxtaposition to the stock yards. The only interest which the Stock Yard Company has in Pfælzer & Sons' interstate business is compensation for its services in handling their freight and its share of the profits realized by the Junction Company in rendering its service. Any other company with which it has made no contract would be compelled to pay the full charge for the services rendered without any rebate or concession. Another company might have a contract for a larger or smaller bonus, and thereby receive different treatment. Certainly as to the company which receives no such bonus there has

been an undue advantage given to and an unlawful discrimination practiced in favor of Pfælzer & Sons. If these companies had filed their tariffs, as we now hold they should have filed them, they would have been subject to the restrictions of the Elkins Act as to departures from published rates—and we must consider the case in that light—and this preferential treatment, as we have said, would have been in violation of that act. It is the object of the Interstate Commerce Law and the Elkins Act to prevent favoritism by any means or device whatsoever and to prohibit practices which run counter to the purpose of the act to place all shippers upon equal terms. We think the Commerce Court should have enjoined the carrying out of this contract.

It follows that in case No. 621 the judgment of the Commerce Court should be reversed and the case remanded for the entry of a decree in conformity to this opinion. In No. 622 the judgment of the Commerce Court should be affirmed.